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FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

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REPORTS
OF THE
DECISIONS OF
ELECTION COMMITTEES

DURING THE
EIGHTEENTH PARLIAMENT
OF THE
United Kingdom.

BY
F. S. P. WOLFERSTAN, Esq.,
AND
S. B. BRISTOWE, Esq.,
OF THE INNER TEMPLE, BARRISTERS-AT-LAW.

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CONTENTS.

CASE I.

BOROUGH OF ASHBURTON.

	PAGE
Preliminary resolutions	1
Agency at former election no evidence of agency at subsequent one	3
Report	5

CASE II.

BOROUGH OF WAKEFIELD.

Statement by agent as to acts done during election admissible, though made after agency terminated	7
Examination proceeded with after defence of seat abandoned	8
Report	8

CASE III.

BOROUGH OF AYLESBURY.

Statement by alleged agent after election inadmissible to prove agency	12
--	----

Cases in bribery lists inquired into, though not alluded to in opening speech	14
Bribery by promises to hire vehicles	15
Report	17

CASE IV.

BOROUGH OF DARTMOUTH.

Inquiry to proceed, though sitting member decline to defend his seat	20
Report	21
Costs refused	22

CASE V.

CITY OF GLOUCESTER.

Telegraph messages ordered to be produced	24
Documents on the minutes, and not objected to at proper time, will not be struck off	25
Conversations at a club as to election are admissible when acts of bribery are proved against members then present	25
Sitting member examined at his own request, after abandoning seat	26
Report	27

CASE VI.

BOROUGH OF HUDDERSFIELD.

Payment of travelling expenses not bribery since 21 & 22 Vict. c. 87,	29
---	----

CONTENTS.

V

PAGE

Resolution of Committee	31
<i>Moxon's Case</i> .—Vote bad where voter influenced by promise to buy goods	32
<i>Chapman's Case</i> .—Vote bad where voter persuaded by promise of bribe to his son, and threatened with loss of custom by employer	32
<i>Hughes' Case</i> .—Evidence of voter and others, on notes, may be read in support of objection to such voter on a scrutiny	33
Vote good where voter employed and paid as messenger	33
<i>Crossley's Case</i> .—Vote bad where promise to voter to hire rooms of him	34
<i>Hudson's and Partridge's Cases</i> .—Votes bad where rooms in voters' houses are hired for no object	34
<i>Healey's Case</i> .—Promise to send beer to a publican's house, for voters, is not bribery	35
<i>Priestley's Case</i> .—Vote bad when given on promise to send goods, which were sent and not paid for	36
<i>Wells' Case</i> .—Vote of the promisor of bribe good	37
<i>Cowgill's Case</i> .—Placarding of public-house is, by itself, insufficient evidence of bribery	37
Report	38

CASE VII.

BOROUGH OF BURY.

Evidence to discredit one's own witness admissible	41
Name of briber, omitted by mistake, not allowed to be inserted in list	41
What insufficient evidence of bribery	42
Final resolutions	47

CASE VIII.

LEICESTERSHIRE, NORTH.

What insufficient evidence of bribery	49
Report	53

CASE IX.

BOROUGH OF MAIDSTONE.

	PAGE
Bribery lists not allowed to be amended	57
Report	57

CASE X.

CITY OF NORWICH.

Jurisdiction of Committee to hear petition, although member since re-elected	59
What insufficient evidence of bribery by sitting member	60
Report	61

CASE XI.

BOROUGH OF CHELTENHAM.

Where no legal register, petition withdrawn	64
Committee examine agents on both sides as to cause of withdrawal of petition	64
Report	65

CASE XII.

CITY OF LIMERICK.

Committee will not inquire why a voter is not produced as a witness	68
What insufficient evidence of riot and intimidation to avoid election	69
Report	70

CASE XIII.

BOROUGH OF PRESTON.

	PAGE
What insufficient evidence of agency	72
Paying canvassers is not bribery	74
Report	75

CASE XIV.

BOROUGH OF BEVERLEY.

What sufficient evidence of agency and bribery	79
Employment of messengers not bribery	80
Report	81

CASE XV.

BOROUGH OF KINGSTON-UPON-HULL.

Where parties may contradict their own witnesses in a material particular	85
Report	87

CASE XVI.

CITY OF CARLISLE.

In treating lists the name of the inn or public-house must be given	91
Payment for travelling expenses and loss of time not bribery	92
What not sufficient evidence of treating	95
Report	97

CASE XVII.

BOROUGH OF WEYMOUTH.

	PAGE
Report	100

CASE XVIII.

ROSCOMMON COUNTY.

Bills and claims not sent in to election auditor ordered to be produced	104
Agent may be asked whether he hired lodgings for voters to obtain owner's vote	106
What sufficient evidence of treating	107
Report	112

CASE XIX.

BOROUGH OF GREAT YARMOUTH.

Conversations of supposed agent after termination of agency inadmissible	115
Evidence of bribery admissible, though alleged briber not identified in the bribery list	116
Conversations as to vote, before election or vacancy, inadmissible	117
What insufficient evidence of agency	118
Report	119

CASE XX.

BOROUGH OF DOVER.

	PAGE
Committee will not order production of documents by public departments	122
But they will issue a <i>subpœna duces tecum</i> to any officer of a public department that the petitioner wishes to call	123
Committee will inquire into alleged interference by ministers of the Crown, if it is proposed to connect sitting member with such interference	124
Evidence of a corrupt agreement to return a particular person admissible in the event of another becoming a candidate	126
To prove alleged interference of ministers, conversations between a minister and his secretary admissible	128
As also are letters from his secretary to such minister	129
Evidence of bribery by B. not allowed when on list the bribery is stated to have been by some one else	130
<i>Semble</i> , that where bribery cases come out during the investigation, application to amend ought to be made at once	130
What insufficient evidence of bribery by agents	131
What insufficient evidence of interference by ministers in the election	132
Report	137

CASE XXI.

CLARE COUNTY.

Evidence of payment to non-voters inadmissible, unless voters bribed thereby	139
What sufficient evidence of bribery	140
What sufficient evidence of treating	141
Report	141
Costs refused	143
Recriminatory evidence admissible when seat claimed in the petition, although the claim to the seat is withdrawn	143
Report	143

CASE XXII.

CITY OF NORWICH.

	PAGE
Petitions will be heard according to their order in the Journals .	149
A member proved to have been guilty of bribery, by himself or agents, at a former election, cannot be elected again for the same place, although, before the first election petition, upon which he is found guilty, he decided, he accepts an office of profit under the Crown and is re-elected	150
Report	155

CASE XXIII.

CITY OF PETERBOROUGH.

What insufficient evidence of agency	157
What insufficient evidence of bribery	158
Report	159
Costs refused	160

CASE XXIV.

BOROUGH OF BERWICK-ON-TWEED.

Charges of bribery abandoned	162
<i>Hood's, Birrell's, and Fish's Cases.</i> —What sufficient evidence of non-residence	163, 165, 166
<i>Dixon's Case.</i> —What sufficient evidence of non-residence	170
<i>Bowhill's Case.</i> —What not sufficient evidence of non-residence	168
<i>Robinson's Case.</i> —What not sufficient evidence of non-residence	171
<i>Darling's Case.</i> —What not express decision of revising barrister	172
<i>Gray's Case.</i> —Certificate of chargeability under 11 & 12 Vict. c. 110, s. 11, is admissible as evidence of receipt of parish relief	174

CONTENTS.

xi

PAGE

It is a receipt of parochial relief by voter to have his wife in a lunatic asylum at expense of the parish, although he afterwards repay the expenses	175
<i>Curry's Case</i> .—Payment by relieving-officer to a medical man for certificate of voter's lunacy not a receipt of parochial relief . . .	176
<i>Mace's Case</i> .—It is not a receipt of parochial relief to have a child, aged twenty-two, taken to an asylum and maintained there at the parish expense	177
<i>Todd's Case</i> .—If no objection made at revision that voter was then incapacitated by statute, Committee will not inquire into vote . .	179
Application for costs ought to be made directly after abandonment of cases objected to	180
<i>Strother's Case</i> .—Committee will not inquire into objection that ought to have been taken before the revising barrister	181
<i>Lamb's Case</i> .—Vote of a briber held bad	182
Report	184

CASE XXV.

BOROUGH OF BEVERLEY (SECOND).

Bribery by payment of travelling expenses	188
Facts insufficient to establish agency	189
Report	190

CASE XXVI.

CLARE COUNTY (SECOND).

Finding of prior Committee upon recriminatory evidence not conclusive on second petition	194
Payments to under-sheriff in Ireland, in excess of allowance under 1 & 2 Geo. IV. c. 58, do not disqualify if not corruptly made . .	196
Query whether 1 & 2 Geo. IV. c. 58 (Irish) is repealed	199
Report	205
Costs refused	205

CASE XXVII.

CITY OF LONDONDERRY.

	PAGE
Lease of a railway to a contractor, by Public Works Loan Commissioners, not a contract so as to prevent the lessee from sitting in Parliament	209
A person being a candidate may petition, unless his disqualification to be a candidate be obvious and incontestable	214
Report	217

CASE XXVIII.

BOROUGH OF GREAT GRIMSBY.

Report	219
------------------	-----

CASE XXIX.

BOROUGH OF LISBURN.

Right of petitioners to petition, when contested, must be proved in the first instance	222
What is a <i>bond fide</i> signature of petition within 11 & 12 Vict. c. 98	223
Payment of money to induce a man to personate a voter is bribery	225
Report	227
Costs refused	228
Attorney-General directed to prosecute sitting member	228

CASE XXX.

BOROUGH OF BERWICK-ON-TWEED.

	PAGE
Scrutiny will not be taken first because material witnesses for the petitioner have absconded	230
Committee cannot report non-attendance of witnesses not served with Speaker's warrant	231
Committee will not ask leave of House to adjourn over Easter holidays, to enable petitioner to obtain attendance of absconding witnesses	232
Report	233

CASE XXXI.

BOROUGH OF LISBURN (SECOND).

Committee cannot adjourn, during adjournment of House, to the day after the House meets	236
Member of Committee suddenly taken ill	236
Committee will, in cases of importance, relax rule as to only hearing one counsel on each side	238

CASE XXXII.

BOROUGH OF BARNSTAPLE.

Although sitting member withdraws opposition to the petition, Committee will not avoid seat without some proof of bribery	240
<i>Ley's Case</i> .—Committee will not inquire into vote of Edwin Ley, objected to as William Ley	241
Vote of briber struck off poll, pursuant to 26 Vict. c. 29, s. 8	242
Report	242

TABLE OF CASES CITED.

	PAGE
Bath	W. & D. 152 30, 164, 173
Bedford	C. & R. 79 177
Belfast	F. & F. 601 153
Bletchingly	Glanv. 39 153
Bridgnorth	2 P. R. & D. 21 241
Cambridge	W. & D. 35 97
Cheltenham	2 P. R. & D. 224 202
Clitheroe	2 P. R. & D. 276 204
Clitheroe	2 P. R. & D. 285 153
Cooke's case	W. & D. 149 171
Cooper v. Slade	6 H. of L. Cas. 746 97
Cork	K. & O. 391 153
Crisp's case	W. & D. 153 171
Dartmouth	B. & Arn. 460 212
Drogheda	W. & D. 207 150
Dublin	A.D. 1831 129
Ennis	K. & O. 485 198
Frome	2 P. R. & D. 58 212
Galway	P. & K. 118 158
Gloucester	A.D. 1848 125
Grant v. Guinness	17 C. B. 190 105
Harwich	1 P. R. & D. 303 173
Hertford	P. & K. 546 127, 129
Hodge's case	C. & R. 77 177
Honiton	3 Lud. 162 204
Horsham	1 P. R. & D. 285 153
Ipswich	K. & O. 388, 377 183, 232
Ipswich	W. & D. 173 97
Keppel v. Bailey	2 My. & K. 317 213

	PAGE
Lambeth W. & D. 131	104
Lancaster 2 P. R. & D. 168, 169	171, 172
Lefevre v. Lancaster 3 E. & B. 530	214
Lyme Regis 1 P. R. & D. 26	231
Maidstone Rogers App., 9th ed., 305	212
Penrhyn case 82 Journ. 297	232
Peterborough A.D. 1848	125
Peterborough 2 P. R. & D. 291	204
Pownall v. Hood 11 C. B. 1	180
Reg. v. York 2 Q. B. 847	212
Ribbans v. Crickett 1 B. & P. 264	110
Rochester K. & O. 107	180
St. Albans A.D. 1851	232
Southampton 1 P. R. & D. 47	60, 150, 155
Stamford A.D. 1848	125
Stockbridge 10 Journ. 286	152
Tavistock 2 P. R. & D. 5	151
Thompson v. Pearce 1 B. & B. 25	217
Tulk v. Moxhay 2 Phill. 774	213
Wareham W. & D. 91	33
Warwick P. & K. 536	150
Whithorn v. Thomas 7 M. & G. 1	164, 167
Whittaker v. Wisby 21 L. J., C. P., 116	154
Worcester K. & O. 255	184
Worcester 3 Dougl. 254	125, 129
Youghal F. & F. 410	183

TABLE OF STATUTES CITED.

	PAGE		PAGE
3 Edw. I. c. 5	135	7 & 8 Vict. c. 101, s. 69	174
2 W. & M. st. 1, c. 7	135	11 & 12 Vict. c. 98, s. 2	134
7 W. III. c. 11	109	11 & 12 Vict. c. 98, s. 55	241
7 W. III. c. 35	110	11 & 12 Vict. c. 98, s. 68	125
6 Anne, c. 7, s. 26	59	11 & 12 Vict. c. 98, ss. 73, 75	237
2 Geo. II. c. 24, s. 7	183	11 & 12 Vict. c. 98, s. 83	
22 Geo. III. c. 45, ss. 1, 3	210	20, 60, 123, 231	
35 Geo. III. c. 21	110	11 & 12 Vict. c. 98, ss. 86, 87	
35 Geo. III. c. 29, I.	109	126, 134, 155, 195, 204, 215	
41 Geo. III. c. 52, s. 4, I.	210	11 & 12 Vict. c. 98, s. 92	180
49 Geo. III. c. 118	183	11 & 12 Vict. c. 98, s. 93	143
57 Geo. III. c. 34	211	11 & 12 Vict. c. 110, s. 11	174
1 Geo. IV. c. 60	211	13 & 14 Vict. c. 68, s. 19	199, 202
1 & 2 Geo. IV. c. 58	196, 199	15 & 16 Vict. c. 57	185
3 Geo. IV. c. 86	211	17 & 18 Vict. c. 102, s. 2	183
4 Geo. IV. c. 35	110	17 & 18 Vict. c. 102, s. 3	126
1 & 2 W. IV. c. 24, s. 21	211	17 & 18 Vict. c. 102, s. 4	
2 & 3 W. IV. c. 45, ss. 27, 32	169	37, 97, 110, 200	
2 & 3 W. IV. c. 45, s. 45	176	17 & 18 Vict. c. 102, s. 5	
2 & 3 W. IV. c. 88, s. 48, I.	199	125, 129, 136, 183	
4 & 5 W. IV. c. 96, s. 56	178	17 & 18 Vict. c. 102, s. 15	104
5 & 6 W. IV. c. 76, s. 28	212	17 & 18 Vict. c. 102, s. 18	104
5 & 6 W. IV. c. 76, s. 54	183	17 & 18 Vict. c. 102, s. 26	104
4 & 5 Vict. c. 57	129, 134	17 & 18 Vict. c. 102, s. 36	129, 154
6 Vict. c. 18, ss. 27, 48	64	17 & 18 Vict. c. 125, s. 18	122
6 Vict. c. 18, s. 79	163	21 & 22 Vict. c. 29	29, 31, 65
6 V ict. c. 18, s. 98	173, 179	26 Vict. c. 29, s. 8	37, 42, 73,
7 & 8 Vict. c. 101, s. 27	175	104, 182	

TABLE OF CASES.

Year.	Petition.	Grounds of Petition proceeded upon.	Result.	Page.
1859	Ashburton . . .	Bribery, treating, undue influence	Member duly elected	1
1859	Aylesbury . . .	Bribery, treating, undue influence	{ Members duly elected Member unseated }	10
1864	Barnstaple . . .	Bribery, treating, undue influence	Member unseated .	239
1860	Berwick-on-Tweed .	Bribery, treating, disqualification of sitting member. Scrutiny	Member duly elected	161
1864	Berwick-on-Tweed .	Bribery, treating. Scrutiny	Member duly elected	229
1859	Beverley	Bribery, treating, undue influence. Corrupt agreement between candidates	{ Member duly elected Member unseated }	77
1860	Beverley	Bribery, treating, undue influence	Member duly elected	187
1859	Bury	Bribery, treating, undue influence	Member duly elected	40
1859	Carlisle	Bribery, treating, undue influence	Members duly elected	90
1859	Cheltenham . . .	Bribery, treating, undue influence	Member duly elected	63
1860	Clare County . . .	Bribery, treating, undue influence	Member unseated .	138
1860	Clare County . . .	Corruptly giving illegal fees to returning officers, agents, &c., at former election, whereby he was disqualified	Member duly elected	191
1859	Dartmouth	Bribery, treating, undue influence	Member unseated .	19
1860	Dover	Bribery, treating, undue influence, interference of ministers	Members duly elected	121
1859	Gloucester	Bribery, treating, undue influence	Members unseated .	23
1862	Great Grimaby . .	Bribery, treating, undue influence, violence, and intimidation	Member duly elected	218
1860	Great Yarmouth . .	Bribery, treating, undue influence	Members duly elected	114
1859	Huddersfield . . .	Bribery, treating, undue influence. Scrutiny .	Member duly elected	28
1859	Kingston-upon-Hull	Bribery, treating, undue influence	Member unseated .	84
1859	Leicestershire, North	Bribery, treating, undue influence	Members duly elected	48
1859	Limerick City . . .	Bribery, treating, undue influence, violence, and intimidation	Member duly elected	66

Year.	Petition.	Grounds of Petition proceeded upon.	Result.	Page.
1863	Lisburn . . .	Bribery, treating, undue influence	Members unseated .	221
1864	Lisburn . . .	Bribery, treating, undue influence, disqualifica- tion of sitting member through bribery at former election	No decision . . .	234
1860	Londonderry . .	Disqualification by reason of Government contract	Member duly elected	206
1859	Maidstone . . .	Bribery, treating, undue influence	Member duly elected	55
1859	Norwich	Bribery, treating, undue influence	Members unseated .	59
1860	Norwich	Disqualification by reason of bribery at former election	Member unseated .	144
1860	Peterborough . .	Bribery, treating, undue influence	Member duly elected	15
1859	Preston	Bribery, treating, undue influence	Member duly elected	7
1860	Roscommon County	Bribery, treating, undue influence. Bribery after teste of writ	Member unseated .	102
1859	Wakefield . . .	Bribery, treating, undue influence	Member unseated .	7
1860	Weymouth . . .	Bribery, treating, undue influence	Members duly elected	99

CASE I.

BOROUGH OF ASHBURTON.

1859.

The Committee was appointed on the 22nd of July, 1859,
and consisted of the following Members :—

Right Hon. Edward Pleydell-Bouverie, Kilmarnock,
(*Chairman.*)

Richard Montesquieu Bel-
lew, Esq., Louth.

Gilbert Greenall, Esq., War-
rington.

Rainald Knightley, Esq.,
Northamptonshire, South.

Richard Brinsley Sheridan,
Esq., Dorchester.

Petitioners :—Electors.

Sitting Member :—John Harvey Astell, Esq.

Counsel for Petitioners :—Mr. Phinn, Q.C., Mr. Clerk, and
Mr. Raymond.

Agents :—Mr. Benett and Mr. Tucker.

Counsel for Sitting Member :—Mr. Slade, Q.C., Mr. W. H.
Cooke, and Mr. Bentinck.

Agents :—Messrs. Baxter, Rose, and Norton, and
Mr. George Caunter.



THE Committee agreed to the following re- July 26.
solutions respecting the conduct of the case :— Prelimi-

1. " That counsel will not be allowed to go ^{nary reso-} into matters not referred to in their opening ^{lutions.} statement, without a special application to the Committee for permission to do so."

2. " That if costs be demanded by either

Preliminary resolutions.

party, under 11 & 12 Vict. c. 98, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide."

3. "That the Committee expect that, with respect to cases of bribery, or offers or promises of money, or other valuable consideration, which it is intended to bring home to the sitting member, or his agents, the counsel for the petitioners will now state the names of the electors bribed, or to whom such offers were so made, and those of the persons who actually gave the bribes, or offered so to do."

4. "The Committee, however, reserve to themselves a power, upon the special application of counsel, to proceed with any case which tends to inculcate any principal or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, with the circumstances of which the parties could not be reasonably supposed to have been previously cognisant."

5. "That, with respect to treating, the Committee will expect counsel to state the times and places where such treating is alleged to have taken place."

6. "That, with respect to undue influence, the Committee will require to be furnished with a list of the persons who are alleged to have been subjected to such undue influence, and also with a list of those who are alleged to have exercised it."

7. "The Committee, however, reserve to

themselves a discretionary power, as in cases Preliminary resolutions.
of bribery."

8. "That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the agents, the sitting member, the petitioners, and the other candidates, without the special leave of the Committee."

The petition, after stating that at the last Petition.
election John Harvey Astell, Esq., and George Moffatt, Esq., were the candidates, and that the former was returned, alleged bribery, treating, and undue influence against Mr. Astell and his agents, and prayed the House to declare Bribery, treating, and undue influence.
his election and return to be null and void.

On the following question being put to a Agency at former election no evidence of agency at a subsequent one.
witness (Maria Dicker) under examination by Mr. Clerk, "Do you recollect whether Mr. Astell canvassed at all in 1857 when he was there?"

Mr. Cooke objected to the question on the ground that the Committee had nothing to do with the proceedings at the previous election.

Mr. Clerk submitted that it was a question of agency; and if he proved that the same persons who acted as agents for Mr. Astell in 1857 were employed for him in 1859, it was strong proof of their being his agents.

The Committee decided that agency in 1857 could not be made evidence of agency in 1859.

July 27. The facts proved with reference to the agency of
What suffi- Mr. Henry Tozer were as follows :—That he had
cient evi- come down to Ashburton with Mr. Astell at the
dence of previous election in 1857 ; that he was an active
agency. supporter of his at the election in 1859—can-
vassing for him, and being seen in and out of
the poll-booth at the election ; that he called
most days on Mr. Astell at the London Inn,
where Mr. A. was staying ; that he frequently
left the London in company with Mr. Astell on
his canvass, and sometimes in the same car-
riage ; that on the morning when Mr. A. came
to Ashburton he, Mr. H. T., asked the landlady
of the London Inn whether his rooms would be
ready, and subsequently went over to Newton
in a trap (which was not charged to Mr. Astell),
to see if Mr. Astell had arrived ; that he can-
vassed the constituency in company with Mr.
Astell, and on one occasion went in to canvass
a voter alone with him ; that the flies ordered
on Mr. Astell's behalf for the purposes of the
election were ordered sometimes by him and
sometimes by Mr. Caunter, the admitted agent
of Mr. Astell ; but the bills were sent in to
Mr. Caunter, and Mr. Caunter, as it appeared,
objected to and did not pay for the flies ordered
by Mr. Tozer.

Mr. *Phinn* then proposed to call a witness.
(Mr. Joseph Turner), and submitted that Mr.
Henry Tozer's agency was sufficiently estab-
lished to enable him to do so.

Mr. *Cooke* was heard to object.

The Committee were of opinion that a *prima facie* case of agency was made out.

Mr. Henry Tozer, who was a solicitor in Ashburton, had, it appeared, paid a judgment debt of £124 11s., due from a voter named Leeman, to Mr. Tucker, the agent for the petitioner, under the following circumstances:—
 Mr. Tucker had issued a writ of *ca. sa.* against Leeman for the debt, directing the sheriff's officer to arrest him before he polled. The officer, accordingly, placed five or six men round the poll booth, so that the voter could not get to vote. Upon this Mr. Henry Tozer, after in vain attempting to induce the sheriff's officer to wait till after the voter had polled, asked the agent of the sitting member whether, if he paid the money for the voter, taking security, it would be a *bond fide* transaction, whether it would be bribery; to which the agent answered, No. Mr. Henry Tozer thereupon paid the money, taking the voter's bond and promissory note for the amount, and the voter then polled. Subsequently to the election the voter had, it appeared, repaid Mr. Henry Tozer £30 of the amount. The voter swore he always meant to vote for the sitting member if he could get to the poll; and it was not contested that he had always voted on that side at previous elections.

Payment of money to enable a person to vote not bribery.

The Committee determined that Mr. Astell was duly elected.

July 29.
Final resolution.

CASE II.

1859.

BOROUGH OF WAKEFIELD.

The Committee was appointed on the 22nd July, 1859, and consisted of the following Members :—

Right Hon. William Monsell, Limerick County,
(*Chairman.*)

Alexander Hugh Baring, Esq., Thetford.		Sir Jas. Dalrymple Elphinstone, Bart., Portsmouth.
James Caird, Esq., Stirling.		Kirkman Daniel Hodgson, Esq., Bridport.

Petitioners :—Electors.

Sitting Member :—William Henry Leatham, Esq.

Counsel for Petitioners :—Mr. Slade, Q.C., Mr. Pickering, Q.C., and Mr. Serle.

Agents :—Messrs. Baxter, Rose, and Norton, and Mr. J. W. Westmoreland.

Counsel for Sitting Member :—Mr. Phinn, Q.C., Mr. Power, Q.C., and Mr. Brewer.

Agents :—Mr. Wyatt and Mr. Wainwright.

July 26. THE Committee agreed to the usual preliminary resolutions (a), inserting in resolution 8, after the word “agents,” the words “whose names shall be handed in.”

Preliminary resolutions.

The petition, after stating that at the last election for the borough of Wakefield, William Henry Leatham and John Charlesworth Dodson Charlesworth, Esqs., were the candidates, and that the former was returned, charged that Mr. Leatham had, by himself and his agents, been guilty of bribery, treating, and undue influence, and prayed that his election and return might be declared null and void.

Petition.

Bribery,
treating,
and undue
influence.

Mr. *Slade* opened a case of bribery.

Henry Beaumont, a voter, who was called as a witness, stated that he had been taken by one Samuel Denison to the office of Mr. Wainwright, the agent for the sitting member, when the sum of £10 was paid to him in Denison's presence; and that about ten days after the election, he having voted for the other candidate, Denison came to him again about the £10. He was then asked, "What did he say to you?"

Statement
by an
agent rela-
tive to acts
done by
him during
the elec-
tion are
admissi-
ble, though
made after
the ter-
mination
of the
agency.

Mr. *Phinn*.—Denison is not shown to have been an agent for Mr. Leatham; but, even if it were proved that he had been so acting, his agency would have terminated with the election; and anything said by him after his employment terminated cannot be evidence against his employer.

Mr. *Pickering*.—It is clear that Denison was an agent, because what he did was recognised by Mr. Wainwright; and it is what was said by him after the election, relative to an occurrence

which happened before the election, which is now the subject of inquiry.

The Committee decided that the question might be put.

Committee will proceed with examination after counsel have given up case.

Witnesses having been called who proved payment of money to them by persons employed by the agent of the sitting member, to induce them to vote,

Mr. *Phinn*, on behalf of the sitting member, stated that, after the evidence which had been given, he should not further resist the prayer of the petition.

The Chairman stated that the Committee were of opinion that they would not be fulfilling their duty if they did not make further investigation into this case.

Godfrey Noble, a witness, was then recalled; and the agent of the sitting member, and the sitting member himself, were examined.

July 27.

Final resolutions.

The Committee then came to the following resolutions for report to the House :—

1. "That William Henry Leatham was, by his agents, guilty of bribery at the last election."
2. "That William Henry Leatham is not duly elected a burgess to serve in this present Parliament for the borough of Wakefield."
3. "That the last election for the said borough is a void election."
4. "That it was proved to the Committee that Thomas Beaumont had been bribed with

BOROUGH OF WAKEFIELD.

the payment of £10; that John Jackson had been bribed with the payment of £30; that John Cousins had been bribed with the payment of £25; that George Senior had been bribed with the payment of £30; but that it was not proved that such bribery was committed with the knowledge and consent of the sitting member."

5. "That there is reason to believe that corrupt practices have extensively prevailed at the last election for the said borough of Wakefield" (a).

(a) A Commission, under 15 & 16 Vict. c. 57, was appointed upon this report; and a criminal information was subsequently filed by the Attorney-General against the two candidates, Mr. Leatham and Mr. Charlesworth, and others, for bribery.

CASE III.

1859.

BOROUGH OF AYLESBURY.

The Committee was appointed on the 25th July, 1859, and consisted of the following Members :—

Right Hon. Sir John Trollope, South Lincolnshire,
(*Chairman.*)

W. Patrick Adam, Esq., Clackmannan.		Captain Gladstone, Devizes.
Sir Charles Earwicke Douglas, Bart., Banbury.		Lord Lovaine, Northumberland, North.

Petitioners :—1 and 2. Thomas F. C. Vernon Wentworth, Esq., doubly returned.

3. Electors, against the return of Mr. Bernard and Mr. Smith.

4. Samuel George Smith, Esq., doubly returned.

5. Electors, against the return of Mr. Wentworth.

Counsel for 1, 2, and 3 Petitions :—Mr. Power, Q.C., Mr. Welsby, and Mr. Homersham Cox.

Agents :—Mr. Darvill, Mr. H. Watson, and Mr. W. D. Cooper.

Counsel for 4 and 5 Petitions :—Mr. Slade, Q.C., Mr. Clerk, and Mr. Granville Somerset.

Agents :—Messrs. Baxter, Rose, and Norton, Mr. Isaac Williams, Mr. Joseph Parrott, Mr. Thomas Parrott, Mr. John Edward Barker, Mr. Frederick Sumner Irving, and Mr. Henry Griffiths.

THE Committee agreed to the eight preliminary July 27.
 resolutions mentioned *ante*, p. 1, omitting in Prelimi-
 resolution 8 the words, "the sitting member, nary reso-
 petitioner, and other candidates," and adding, lutions.
 after the word "agents," the words "whose
 names shall be handed in." And also to the
 following:—

9. "That the Committee will only allow one
 counsel to address them on opening the case,
 and one counsel on the summing up."

10. "That if any point of law should arise
 requiring argument, the Committee reserve to
 themselves the power of only hearing one coun-
 sel on each side."

11. "That if the leading counsel are not
 prepared to sum up the case on either side
 when the evidence is terminated, the Com-
 mittee will not protract the proceedings for the
 convenience of counsel who may be absent."

12. "That, with respect to objected votes, the
 Committee expect counsel to exhaust one class
 of objections before proceeding to another."

The first petition of Mr. Wentworth, after 1st peti-
 stating that at the last election Thomas Tying- tion of Mr.
 ham Bernard, Esq., Samuel George Smith, Esq., Went-
 and the petitioner, were candidates, and that worth.
 Mr. Bernard, who had a majority of votes, was
 returned, together with Mr. Smith and the
 petitioner, there being an equality of votes for
 the two latter, complained of the improper
 reception and rejection of votes on various

Bribery, treating, and undue influence. grounds. It then alleged bribery, treating, and undue influence against Mr. Bernard and his agents, and prayed the House to amend the return, or to declare the election of Mr. Smith to be null and void, and to declare the petitioner to have been duly elected.

2nd petition of Mr. Wentworth. The second petition of Mr. Wentworth complained of the improper reception of votes for Messrs. Bernard and Smith, on other grounds than those alleged in the first petition.

1st petition of electors. Bribery, treating, and undue influence. The first petition of electors complained of bribery, treating, and undue influence by Mr. Bernard and Mr. Smith, and their agents.

Petition of Mr. Smith. Bribery, treating, and undue influence. The petition of Mr. Smith complained of the improper reception and rejection of votes on various grounds; and it then charged bribery, treating, and undue influence against Mr. Wentworth and his agents.

2nd petition of electors. Bribery, treating, and undue influence. The second petition of electors complained of bribery, treating, and undue influence by Mr. Wentworth and his agents.

Mr. *Power*, on behalf of Mr. Wentworth (whose name appeared before Mr. Smith's in the return), and on behalf of the first petition of electors, opened the case.

Conversations after election William Gilbert, a witness under examination by Mr. *Welsby*, was asked, whether he had

met Mr. Bull (a) on the Monday after the election. He replied that he had; and was then asked, "Had you a talk with him about the election?"

with alleged agent not admissible to prove agency.

Mr. *Clerk*.—The question is inadmissible. The object of it must be to prove the agency of Mr. Bull; but this ought to be done in the regular way, by showing what he did either at or before the election, and not by giving in evidence conversations that different persons may have had with him about the election after his agency would have terminated, if even he were an agent.

The Committee, after deliberation, decided that the evidence with reference to agency was not admissible.

The evidence in support of the allegations of bribery against Messrs. Bernard and Smith failed.

With reference to treating, it appeared that refreshments were supplied, at the White Hart Inn, Aylesbury, to persons, some of whom were voters; but the expense was not charged to any one, nor was it proved by whose order they were furnished, or that they had been paid for, although an agent of Messrs. Bernard

What not sufficient evidence of treating.

(a) Bull was proved to have been very active during the election on behalf of Smith and Bernard, to have canvassed many of the electors, and to have taken others to the poll.

and Smith was shown to have been in and out of the inn during the day. At another inn, the King's Head, refreshments were also provided for a number of voters and their wives, upon the order of a Mr. Harwood, who had paid for them; but he was not shown to have been an agent for Bernard and Smith.

Resolution
of Com-
mittee.

The Committee resolved, that Mr. Bernard and Mr. Smith were not, by themselves or their agents, guilty of bribery (*a*).

Mr. *Somerset* applied for costs, but the application was refused, after deliberation.

July 29.

Mr. *Clerk* then opened a case of bribery and treating against Mr. Wentworth and his agents, by promises of money for cart and horse hire, &c.

Case contained in
bribery list
may be
gone into,
although
not men-
tioned in
opening
speech.

Humphrey Bull, an elector for the borough, having sworn that £500 had been offered to him by Mr. Darvill, the agent for Mr. Wentworth, in order to secure his interest at the election,

Mr. *Power* applied to have this evidence struck out of the minutes, as the case had not

(*a*) The Committee divided upon the question, "That Samuel George Smith, Esq., was, by his agents, guilty of bribery at the last election for the said Borough and Hundreds." *Aye*, 1: Sir Charles Douglas; *Noes*, 4: Lord Lovaine, Captain Gladstone, Sir J. Trollope, Mr. Adam.

been mentioned by Mr. *Clerk* in his opening speech.

Mr. *Slade*, in answer to the objection, urged that the name of Bull appeared in the bribery list handed in to the Committee.

Mr. *Power* having been heard in reply, the Committee decided "That the examination of the witness should be proceeded with" (*a*).

In support of the case against Mr. Wentworth, it appeared that many of the voters had long distances to go to the poll; that in Aylesbury the means of conveyance were very limited, with the exception of the conveyances belonging to the inns in the interest of Bernard and Smith; in consequence of which the conducting agent for Mr. Wentworth wrote to all the sub-agents in the different districts, urging them to engage at once every available carriage for the day of election, and to look to him for all additional conveyances that might be required; at the same time giving them positive instructions not to make the hiring of carts and horses from voters conditional upon their going to vote. An application was afterwards made to the supervisor of excise of the district for forty stage carriage licenses, a list

Bribery by
promises
to hire
vehicles.

(*a*) The Committee divided. *Ayes*, 3: Captain Gladstone, Lord Lovaine, Sir J. Trollope; *Noes*, 2: Mr. Adam, Sir C. Douglas.

of the names for whom the licenses were required being left with him; but, in consequence of instructions from the Board of Inland Revenue, he declined to grant the licenses, and then it became necessary to hire carriages from a distance, at a greatly increased cost to Mr. Wentworth.

It was proved that Benjamin Child and Harry Scott had attempted to bribe different persons, by promising them money for the hire of conveyances, if they would vote for Mr. Wentworth. Benjamin Child was admitted to have been a sub-agent.

Mr. *Power* having summed up the evidence in answer to the charge of bribery, and Mr. *Slade* having replied,

The Committee resolved,—

1. "That an attempt was made by Benjamin Child and Harry Scott to bribe Joseph Poulton by the offer of two guineas for cart hire" (*a*).

2. "That it was not proved that such bribery was committed with the knowledge and consent of T. F. C. V. Wentworth, Esq."

3. "That T. F. C. V. Wentworth, Esq., was, by his agent Benjamin Child, guilty of bribery

(*a*) The Committee divided. *Ayes*, 3: Sir J. Trollope, Captain Gladstone, Lord Lovaine; *Noes*, 2: Mr. Adam, Sir C. Douglas.

at the last election for the Borough and Hundreds of Aylesbury" (a).

Mr. *Power* having then stated that he should not proceed further with the case on behalf of Mr. Wentworth, the Committee proceeded with the scrutiny, and one voter (Thomas Waite) having been struck off the poll for Mr. Wentworth, on the ground of non-residence, which was proved by the voter himself,

Mr. *Power* stated that he should not further resist the case.

The Committee then came to the following additional resolutions (b):—

August 2.
Final resolutions.

4. "That the vote of Thomas Waite is a bad vote, and be struck off the poll."

5. "That Thomas Tyringham Bernard, Esq., is duly elected a burgess to serve in this present Parliament for the Borough and Hundreds of Aylesbury."

6. "That Samuel George Smith, junior, Esq., is duly elected a burgess to serve in this present Parliament for the said Borough and Hundreds."

(a) The Committee divided. *Ayes*, 3: Sir J. Trollope, Captain Gladstone, Lord Lovaine; *Noes*, 2: Mr. Adam, Sir C. Douglas.

(b) All the resolutions except the fourth were reported to the House.

7. "That Thomas Frederick Charles Vernon Wentworth, Esq., is not duly elected a burgess to serve in this present Parliament for the said Borough and Hundreds."

8. "That they had altered the poll taken at such election, by striking off the name of Thomas Waite, as not having had a right to vote at such election."

CASE IV.

BOROUGH OF DARTMOUTH.

1859.

The Committee was appointed on the 25th July, 1859, and consisted of the following Members :—

Anthony Lefroy, Esq., Dublin University,
(*Chairman.*)

Hon. Charles Wentworth	Robert Stephenson, Esq.,
George Howard, Esq.	Whitby.
Cumberland.	William Earle Welby, Esq.,
Martin Tucker Smith, Esq.,	Grantham.
Wycombe.	

Petitioner :—Sir Thomas Herbert, Kt., the unsuccessful Candidate.

Sitting Member petitioned against :—Edward Wyndham Harrington Schenley, Esq.

Counsel for Petitioner :—Mr. Slade, Q.C., Mr. Serjeant Pigott, and Mr. W. H. Cooke.

Agents :—Messrs. Baxter, Rose, and Norton, Mr. Gurney, and Mr. Brooking.

[No Counsel appeared for the Sitting Member.]

Agent for Sitting Member :—Mr. Wyatt.

THE Committee agreed to the first eleven of the July 27. usual preliminary resolutions (a).

Preliminary resolutions.

Petition. The petition, after stating that at the last election Edward Wyndham Harrington Schenley, Esq., and the petitioner were candidates, and that the former was returned, alleged that the former obtained his election by means of a corrupt agreement, and also by corrupt and illegal gifts and promises, &c., whereby he was incapacitated to serve in the present Parliament; that the said E. W. H. Schenley, Esq., was by himself and his agents guilty of bribery, treating, and undue influence. It then complained of the improper reception of votes invalidated by reason of the voters having been bribed, treated, &c., and for other causes, and of the rejection of voters tendered for the petitioner; and it prayed a scrutiny, and the seat for the petitioner.

Bribery, treating, and undue influence.

Scrutiny.

Case must proceed, though sitting member decline to defend his seat. Mr. *Wyatt* stated that it was not the intention of the sitting member to defend his seat.

Mr. *Slade* said he was taken by surprise by the statement on the other side. He was prepared to proceed and to prove his case; and he contended that the Committee were bound to inquire into the facts and report upon them. If the sitting member had reported his intention to the Speaker in the manner pointed out by the 11 & 12 Vict. c. 98, there would have been no necessity for the Committee or his appearing there.

The Committee, after deliberation, directed Mr. *Slade* to proceed with the case.

Mr. *Slade* was then heard to open the case, and proceeded to call witnesses in support of the allegations in the petition.

At the conclusion of the case, the Committee came to the following final resolutions for report to the House :—

1. "That Edward Wyndham Harrington Schenley, Esq., is not duly elected a Burgess to serve in this present Parliament for the borough of Dartmouth." Final resolutions.

2. "That the last election for the said borough is a void election."

3. "That Edward William Harrington Schenley, Esq., was, by his agents, guilty of bribery at the last election for the said borough."

4. "That it was proved to the Committee that Richard Mitchelmore received £10 from William Tucker (a), to induce him to abstain from voting; that Elizabeth Phillips received £20 from William Tucker for the hire of rooms at the Dolphin public-house, her husband being

(a) Mr. Tucker, who was a tailor, and was proved to have been absent from the borough ever since the election, was one of Mr. Schenley's committee, and was admitted by Captain Bulley to have received some of the money (£1000) that he, Captain Bulley, received "for electioneering purposes" (£900 of which was received from Mr. S., and the other £100 from the candidate who had retired in Mr. S.'s favour), and distributed by order of different members of Mr. S.'s committee.

a voter, and voting for Mr. Schenley half an hour afterwards" (a).

5. "That large sums of money were received by Captain Bulley (b), and distributed by him to various members of Mr. Schenley's committee; but it does not appear that the legal expenses of the election were defrayed from that source."

Costs refused.

Mr. *Slade* applied for costs, and that the Committee should report the defence of the seat by Mr. Schenley to be frivolous and vexatious.

Mr. *Wyatt* was heard against the application.

Mr. *Slade* was heard in reply.

The Committee resolved, "That the defence of the seat on the part of Mr. Schenley is not frivolous and vexatious."

(a) The rooms were hired for Mrs. Schenley and friends at the nomination, to hear the speeches from; and were, in fact, used. But no sum was mentioned when the agreement was made; and on the morning of the polling the £20 was put down for the hire of the room, without Mr. Tucker asking what the charge was, or saying anything, except that it was for the hire of the room. The yearly rent of the house, it appeared, was £18.

(b) Captain Bulley was the chairman of Mr. Schenley's committee.

CASE V.

CITY OF GLOUCESTER.

1859.

The Committee was appointed on the 25th of July, 1859,
and consisted of the following Members:—

Gathorne Hardy, Esq., Leominster,
(*Chairman.*)

Lord Robert Gascoigne		James Banks Stanhope, Esq.,
Cecil, Stamford.		North Lincolnshire.
Sir Henry Ferguson Davie,		Walter Buchanan, Esq.,
Bart., Haddington.		Glasgow.

Petitioners:—Electors.

Sitting Members:—Philip William Price, Esq., and Charles
James Monk, Esq.

Counsel for the Petitioners:—Mr. Slade, Q.C., Mr.
Huddleston, Q.C., and Mr. W. H. Cooke.

Agents:—Messrs. Baxter, Rose, and Norton, and
Mr. Lovegrove.

Counsel for Mr. Price:—Mr. Phinn, Q.C., Mr. Powell.

Agent:—Mr. Ellis.

Counsel for Mr. Monk:—Mr. Rodwell, Q.C., and Mr. Clerk.

Agents:—Mr. Baker and Mr. Jones.

THE Committee agreed to the first eight of the July 27.
usual preliminary resolutions (a).

Prelimi-
nary reso-
lutions.

Petition.

The petition, after stating that at the last election for the city of Gloucester, Sir Robert Walter Carden, Knight, William Philip Price, Esq., and Charles James Monk, Esq., were candidates, and that the two latter were returned, alleged bribery, treating, and undue influence against the sitting members and their agents, and prayed the House to declare their election and return to be null and void.

Bribery,
treating,
and undue
influence.

Mr. *Slade* opened a case of bribery and treating.

July 29.

Committee
will order
a telegraph
clerk to
produce
messages
signed by
parties
sending
them,
when ma-
terial to
the in-
quiry.

Robert Boxall, a clerk to the telegraph company, was called to produce some telegraph messages, signed by the parties who sent them in the usual way; but he declined to produce them without the order of the Chairman. The Committee directed them to be produced. Two of them were then read by Mr. Huddleston; the second, being signed with initials only, was objected to by Mr. Rodwell, and the Committee decided that there was nothing to connect such telegram with the matter before the Committee. Four other messages were then produced and read, one of which was proved to be in the handwriting of Thompson (an election agent of the sitting members). The handwriting of the other messages was not proved.

Mr. *Huddleston* then proposed to put these messages in; but—

Docu-
ments
which

Mr. *Rodwell* objected, on the ground that none of them were identified with any persons

sought to be connected with the sitting members, except the one proved to be in Thompson's handwriting.

Mr. *Huddleston* urged that the objection was too late; and the Committee decided that all the documents were already upon the notes, except the one signed with initials.

Upon the question being put to a witness, a member of the Gloucester Reform Club, whether anything was said at the club relative to Mr. Monk's position at the time when it was proposed to send a deputation to him, it was objected to by

Mr. *Rodwell*, as the Committee were not then upon a question of bribery, but one of agency; and that there was no proof that any of those present at the club were agents; and further, that as Mr. Monk could not be bound by the club proceedings, nothing ought to be stated by the witness relating thereto.

Mr. *Huddleston* contended that, having proved distinct acts of bribery against certain members of the club, he was at liberty to examine the witness as to what took place at a meeting of the club where such members were present, and at which it was resolved to bring forward Mr. Monk as a candidate.

The Committee decided that the evidence was admissible. There being *primâ facie* evidence that a great many other persons were connected with the bribery, what took place with reference

might have been objected to at the proper time, when once on the minutes will not be struck off.

Conversations at a club relative to the election of the member petitioned against are admissible when acts of bribery have been proved against members of the club, and such persons are present at the conversations.

to the election at this club, of which all such persons were members, was very important to enable the Committee to get at the truth.

July 29. At the close of the petitioners' case, Mr. *Rodwell*, on behalf of Mr. Monk, said that after the evidence given, which had taken him by surprise, Mr. Monk withdrew from further contesting the seat.

Sitting member, withdrawing opposition to the petition, examined by the Committee at his own request.

Mr. Monk was then examined by the Chairman, at his own request.

The Committee then came to the following final resolutions for report to the House:—

1. "That William Philip Price, Esq., is not duly elected a citizen to serve in this present Parliament for the city of Gloucester."

2. "That Charles James Monk, Esq., is not duly elected a citizen to serve in this present Parliament for the city of Gloucester."

3. "That the last election for the said city of Gloucester is a void election."

4. "That William Philip Price, Esq., and Charles James Monk, Esq., were, by their agents, guilty of bribery at the last election."

"That it was proved to the Committee that George Welsh, Anthony Bond, William Merritt, Thomas Evans, John Keeling, George Bowers, Thomas May, Thomas Bowers, George Huggins, John Wadley, Walter Seymour Davey, James Coates, Henry Lane, Samuel Jeffs, James Vaile, Arthur Peters, and Edwin Harris had been

bribed with" (*the sums set opposite to their names*); "but that it was not proved that such bribery was committed with the knowledge and consent of the said William Philip Price, Esq., and Charles James Monk, Esq."

5. "That it appears to the Committee that other bribes were paid by the agents of William Philip Price, Esq., and Charles James Monk, Esq., to persons whose names have not been proved before the Committee; and that bribes were extensively offered to voters, and voters were colourably employed as messengers."

6. "That the Committee have reason to believe that corrupt practices extensively prevailed at the last election for the city of Gloucester" (*a*).

(*a*) A Commission, under 15 & 16 Vict. c. 57, was appointed on this report.

1859.

CASE VI.

BOROUGH OF HUDDERSFIELD.

The Committee was appointed on the 25th July, 1859, and consisted of the following Members :—

The Right Hon. Henry Arthur Herbert, Kerry,
(*Chairman.*)

Colonel Cartwright, North- amptonshire, South.	William Orme Foster, Staf- fordshire, South.
Rt. Hon. W. F. Cowper, Hertford.	John Vance, Esq., Dnblin.

Petitioners :—Electors.

Sitting Member :—E. A. Leatham, Esq.

Counsel for Petitioners :—Mr. Slade, Q.C., Mr. Pickering,
Q.C., and Mr. Maule.

Agents :—Messrs. Baxter, Rose, and Norton, Messrs. Brook,
Freeman, and Batley, Mr. Thomas Robinson,
Mr. Samuel Henry Stocks.

Counsel for the Sitting Member :—Mr. Phinn, Q. C.,
Mr. Serjeant Pigott, and Mr. Webster.

Agents :—Mr. R. H. Wyatt and Mr. Clough.



July 27. THE Committee agreed to the twelve usual pre-
liminary resolutions (a).

Prelimi-
nary reso-
lutions.

Petition. The petition, after stating that at the last

election for the borough of Huddersfield, Edward Aldam Leatham, Esq., and Edward Ackroyd, Esq., were candidates, and that the former was returned, complained of the improper reception of the votes of persons disqualified on various grounds, and also of the improper rejection of votes tendered on behalf of Mr. Ackroyd. It alleged bribery, treating, and undue influence against Mr. Leatham and his agents, and finally prayed a scrutiny, and the seat for Mr. Ackroyd.

Bribery,
treating,
and undue
influence.
Scrutiny.

Mr. *Slade* opened the case.

It was proved that Benjamin Robinson, the agent for election expenses appointed by the sitting member, had paid sums of money to different out-voters as travelling expenses. In some cases the amount he paid was more than the actual fare; in others it was the exact amount, so far as it could be ascertained; but no money had been given until after an attempt had been made to obtain passes for the voters. It further appeared that there was a sort of understanding between the agents of both candidates that the travelling expenses of out-voters were to be paid.

Payment
of travel-
ling ex-
penses not
bribery,
even since
the 21 &
22 Vict.
c. 87.

It was also proved that rooms had been hired at different public-houses and beer-houses in the town, and placarded as Mr. Leatham's non-electors' committee-rooms; that at some of these places drink and refreshments had been supplied to Mr. Leatham's watchmen, and to

Evidence
of agency
when in-
sufficient.

non-electors; and that in some cases the accounts had been sent in to Mr. Leatham's committee, but they had not been paid. Some of these houses were proved to have been hired by an elector named Jabez Wells, who had introduced Mr. Leatham to a meeting at the Pack-Horse Inn, where one of Mr. Leatham's committees afterwards sat, and also to a second meeting held at another inn, called the Woolpack. At the Woolpack, Wells had hired a non-electors' committee-room, as it was called, where refreshments were supplied to different people, and the bill sent in to Mr. Leatham's committee; but it was not paid, and the election agent, who was present, disowned anything done by Wells. It appeared that Wells had been present at two meetings where the question was discussed whether Mr. Leatham should come forward as a candidate; but that, at the second meeting, he had advocated the breaking-up of the meeting, and after that no further confidence was placed in him by Mr. Leatham, his agent or friends, nor was he ever shown to have been at any meetings of Mr. Leatham's supporters, or at any of his committees, or to have acted with them in any way. Mr. Robinson, the election agent for the sitting member, further proved that he knew nothing of Edward Firth, who had engaged committee-rooms at the house of J. Crossley; and that John Wilson, who had hired rooms at the house of Henry Partridge, was employed as a doorkeeper and

messenger, but that nothing else was known of him.

The Committee resolved,—

“That it was not proved that the sitting member had been, either by himself or his agents, guilty of bribery, treating, or undue influence.”

August 4.
Resolutions of
Committee.

The Chairman further stated that as this was the first decision which had been come to under the Act 21 & 22 Vict. c. 87 (*a*), the Committee wished it to be understood that they considered the payment of travelling expenses, which, in this case, was proved to have been made to voters by an agent of the sitting member, was illegal; but that it did not render the sitting member guilty of bribery within the meaning of the Corrupt Practices Prevention Act, 17 & 18 Vict. c. 102.

The Committee then proceeded with the scrutiny.

(*a*) The Act provides “that it shall not be lawful to pay any money or give any valuable consideration to a voter, for or in respect of his travelling expenses,” for the purpose of polling; but enables a candidate or his agent, appointed under sect. 31 of the Corrupt Practices Prevention Act, 1854 (which section is now repealed, and sect. 2 of 26 Vict. c. 29 substituted)—“to provide conveyance for any voters for the purpose of polling at an election, and not otherwise.”

GEORGE MOXON'S CASE.

Objected to on the ground of having been bribed.

If voter influenced by a promise to buy goods at more than their value, vote is bad.

The voter, as it appeared, was an innkeeper at Huddersfield, and was the joint owner of some pigs with one John Chapman. One Jabez Wells had asked him to vote for Mr. Leatham, and promised to buy the pigs at the sum of £10 above their value if he would do so; in consequence of which he voted for Mr. Leatham, and obtained for Mr. Leatham the vote of Mr. Chapman, the father of John Chapman. The money was never paid.

Vote bad.

CHAPMAN'S CASE.

Objected to on the ground of having been bribed.

Vote held bad where voter persuaded by a promise of bribe to his son, and also threatened with loss of custom by his employers.

John Chapman, a shopkeeper in the borough, and an elector, proved that he had promised to vote for Mr. Ackroyd; but that afterwards George Moxon had persuaded him to vote for Mr. Leatham, telling him that Jabez Wells had offered to give £10 more than their value for some pigs belonging to him (Moxon) and Allen Chapman, this witness's son. On cross-examination, the witness added that a large number of his customers had threatened to leave his shop if he did not vote for Mr. Leatham,

and that he had voted for Mr. Leatham mainly on account of his customers.

Vote bad.

JOSEPH HUGHES' CASE.

August 5.

Objected to on the ground of having been bribed.

Mr. *Pickering* proposed to read over the evidence of Rowland Hoyle.

Mr. *Phinn* objected, contending that the evidence must be given *viva voce*, and that no other evidence could be read over than that of the voter himself, whose vote was then the subject of inquiry (a).

The Committee decided that in reference to votes alleged to have been bad in respect of bribery, the evidence already given before the Committee might be quoted by counsel, and that it was not necessary to recall the witnesses; but that if the parties wished to call any rebutting evidence, or desired to add anything to the evidence already given, they were at liberty to do so.

The evidence of Rowland Hoyle, and also of the voter, which had been given previously in the case, was then read, by which it appeared that the voter had been paid a sum of 7s. 6d. by one James Hall, but that it was paid to him for acting as a messenger, and that he did so act.

Vote good.

Evidence of a voter and other witnesses already on the notes may be read in support of objection to such voter on a scrutiny.

Voter employed and paid as messenger, vote good.

(a) See *Wareham* case, Wolf. & Dew, 91.

JOE CROSSLEY'S CASE.

Objected to on the ground of having been bribed.

Promise of money for hire of rooms bribery, and vote of owner bad.

The voter, it appeared, was an innkeeper in Huddersfield, and his house had been hired by one E. Frith, by a promise of £5. The walls of his house were placarded "Leatham's Non-Electors' Committee Rooms." Drink was supplied there to Josiah Thomas and others, which was charged by the voter to Mr. Leatham's committee, but which had not been paid.

Vote bad.

GODFREY HUDSON'S CASE.

Objected to on the ground of having been bribed.

Vote of innkeeper bad on ground of bribery, when rooms are hired for no object, and refreshments supplied to party hiring.

It appeared that rooms in Hudson's public-house in Huddersfield had been engaged by Jabez Wells as "Non-Electors' Committee Rooms," and that beer and refreshments had been provided there by the voter for forty or fifty men employed as watchers by Mr. Leatham's party. The house had been placarded with bills as in the last case. It did not appear that the rooms had been used, either as committee-rooms, or in any way whatever; and Hudson swore that he had made no charge for the use of the rooms, but only for drink

supplied to the watchmen, who were non-electors.

Vote bad (*a*).

HENRY PARTRIDGE'S CASE.

Objected to on the ground of having been bribed.

It appeared that one John Wilson had hired rooms in the voter's inn, as non-electors' committee-rooms for Mr. Leatham, and placards to that effect were put up.

Hire of
rooms at
voter's
house,
vote bad.

Vote bad.

JOSEPH HEALEY'S CASE.

Objected to on the ground of having been bribed.

It appeared that Healey was a beerseller in Huddersfield, who had voted for Mr. Leatham. That he had been taken to the poll by a person named Hopkinson, who had told him that when the election was over there would be some beer, adding that on the Monday after there would be a good blow-out; which Healey understood to mean that beer would be sent to his house to treat the voters with, and not for him to sell on his own account.

Promise to
send beer
to house of
a publican
to treat
voters
with, not
bribery.

Vote good.

(*a*) The Committee divided upon the question that the vote is a good vote. *Aye*, 1 : Mr. Foster; *Noes*, 4 : Colonel Cartwright, Mr. Cowper, Mr. Vance, Mr. Herbert.

August 6.

AQUILA PRIESTLEY'S CASE.

Objected to on the ground of having been bribed.

Vote bad when given in consequence of promise of goods which were afterwards sent and not paid for.

The voter, it appeared, was the keeper of a beer-house in Huddersfield, called the Noah's Ark. He denied that he had ever had any beer from Mr. Cliffe (*a*) except what he had paid for, either in money or labour; but it appeared that he had told one Joseph Driver that Cliffe had been to canvass him for Mr. Leatham, and had promised him some ale if he went and voted; that the ale was sent to him, an eighteen-gallon cask, and that he had never paid for it.

Vote bad.

JABEZ WELLS' CASE.

Objected to on the ground of having offered a bribe.

Vote of the promisor of bribe good.

Mr. *Slade* submitted that Wells was proved to have promised to pay £10 more than the value of some pigs to a voter to induce him to vote, and therefore his vote ought to be struck off the poll; and he cited the *Wareham* case, W. & D. 9; and the *Bath* case, W. & D. 153.

Mr. Serjeant *Pigott* referred to *Rogers on Election Committees*, p. 192 (5th edition), and contended that the promisor of a bribe was not

(*a*) Cliffe, it appeared, was a brewer, who regularly supplied his house with beer.

disqualified. The principle upon which the votes of electors had been struck off the poll for bribery was, that in consequence of some promise or actual receipt of a bribe, a conscientious vote had not been given; but that argument could not apply to the promisor of a bribe. Moreover, the 17 & 18 Vict. c. 102, which enacts that any person giving or promising any money or valuable consideration to a voter to induce him to vote, shall be guilty of bribery, and subjects him to certain penalties, does not say that he shall be disqualified from voting (*a*).

Vote good (*b*).

CHARLES COWGILL'S CASE.

Objected to on the ground of having been bribed.

The voter was a public-house keeper in Huddersfield, and his house had been placarded with bills, "Mr. Leatham's Non-Electors' Committee Rooms," which the voter had allowed to be

Placarding of house as committee rooms, but where nothing was done, insufficient evidence of bribery, where no payment is made, nor any asked for.

(*a*) The 26 Vict. c. 29 now provides that "where any person who has voted at any election is found by any committee to have been guilty of bribery or treating, his vote shall be void, and may upon a scrutiny be struck off the list of voters, notwithstanding that the name of such guilty person has not been included in the list of voters to be objected to."

(*b*) The Committee divided. *Ayes*, 4: Colonel Cartwright, Mr. Cowper, Mr. Foster, Mr. Herbert; *Noes*, 1: Mr. Vance.

posted up on the application of one Joseph Hopkinson; but the voter proved that he had not asked for any payment on account of such placards upon his walls, nor had any of his rooms been used as a committee-room—the bills, as he alleged, having been put up on account of his being of Mr. Leatham's politics; that he had received nothing for the bills, and had never had any intimation of anything being likely to be paid.

Vote good.

Mr. *Pickering* then abandoned the scrutiny.

Costs refused.

Mr. *Phinn* stated that he should not go into any recriminatory charges, Mr. Leatham remaining in possession of the seat; but he applied for costs, on the ground that the petition was frivolous and vexatious.

The Committee decided that the petition was not frivolous and vexatious.

Final resolutions.

The Committee came to the following resolutions for report to the House:—

1. "That Edward Aldam Leatham, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Huddersfield."
2. "That it was proved to the Committee that George Moxon and John Chapman were bribed to vote for the said Edward Aldam Leatham, by Jabez Wells, by the promise of the payment of £10 more than their value for pigs."
3. "That Joe Crossley, a publican, was bribed

to vote for the said Edward Aldam Leatham, by Edward Firth, by the promise of £5, under the pretence of engaging a non-electors' committee-room in his house, in which it was proved that none of the legitimate business of the election was carried on."

4. "That Godfrey Hudson, a publican, was bribed to vote for the said Edward Aldam Leatham, by having part of his house engaged under the same pretence, by Jabez Wells."

5. "That Henry Partridge, a publican, was bribed to vote for the said Edward Aldam Leatham, by having part of his house engaged under the same pretence, by John Wilson."

6. "That Joseph Ibberson, a publican, was bribed to vote for the said Edward Aldam Leatham, by having part of his house engaged under the same pretence, by Jabez Wells."

7. "That Aquila Priestley, a publican, was bribed to vote for the said Edward Aldam Leatham, by the gift of half a barrel of beer, by Joseph Cliffe."

8. "That there was no evidence to show that the aforesaid acts of bribery were committed with the knowledge and consent of the said Edward Aldam Leatham, or his agents."

9. "That the Committee have altered the poll taken at the last election for the borough of Huddersfield, by striking off the names of George Moxon, John Chapman, Joe Crossley, Godfrey Hudson, Henry Partridge, Joseph Ibberson, and Aquila Priestley, for the reasons aforesaid."

CASE VII.

1859.

BOROUGH OF BURY.

The Committee was appointed on the 27th of July, 1859,
and consisted of the following Members :—

Peter Blackburn, Esq., Stirlingshire,
(*Chairman.*)

Charles Salisbury Butler, Esq., Tower Hamlets.		Sir Edward Clarence Kerri- son, Bart., Eye.
William Ewart, Esq., Dum- fries District.		George Sclater-Booth, Esq., Hants, North.

Petitioners :—Electors.

Sitting Member :—Right Hon. Frederick Peel.

Counsel for Petitioners :—Mr. Serjeant Parry, Dr. Wheeler,
and Mr. Hopwood.

Agents :—Messrs. Holmes, Anton, and Co., Mr. Vallance,
and Mr. Crossland.

Counsel for Sitting Member :—Mr. Rodwell, Q.C., Mr. Clerk,
and Mr. Millward.

Agents :—Messrs. Gregory and Co.



July 29. THE Committee agreed to the first eight of the
Prelimi- usual preliminary resolutions (a), including in
nary reso- resolution 8 “the sitting member.”
lutions.

The petition, after stating that at the last Petition. election the Right Hon. Frederick Peel and Thomas Barnes, Esq., were candidates, and that the former was returned, alleged bribery, treating, Bribery, and undue influence against the sitting member treating, and undue influence. and his agents, and prayed the House to declare his election and return to be null and void.

Mr. Serjeant *Parry* opened the case.

Upon Mr. Serjeant *Parry* proposing to call August 2. a witness to prove that a former witness had Evidence to discredit one's own witness admissible. made a statement, viz., that he had received money for his vote, which he denied having made,

Mr. *Clerk* was heard to object to such evidence, and contended that it would be mere hearsay evidence, and, moreover, be discrediting a witness called by the petitioner himself.

Mr. Serjeant *Parry* was heard in answer.

The Committee decided "that the evidence was admissible."

In the course of this day's examination Mr. Serjeant *Parry* applied to the Committee for permission to add the name of a person bribed to the list, as having been bribed by Mr. O. O. Walker, the chairman of the sitting member's committee. Permission to add the name of a briber, omitted by mistake from the bribery list, refused.

The Chairman inquired whether the name had been alluded to in the course of the examination.

Mr. Serjeant *Parry* stated that it had not, but that it had been inadvertently omitted from the list.

Mr. *Clerk* objected to the amendment of the list.

The Committee decided "that the name might not be inserted in the list" (*a*).

What not
sufficient
evidence
of bribery.

From the evidence given in support of the petition, it appeared that a Mr. Thomas Parker had in four instances offered money to voters (£5 and £10), in one case taking out and laying down the money, either to vote for the sitting member, or to abstain from voting against him, or to go away from Bury during the election; and that in one instance he came to the witness's shop after the petition was talked about, and asked him not to speak of the transaction, as it would split their friendship. It did not appear that in any of the above instances, except one, Parker had paid any money. In that instance the witness (Robert Whittaker) stated that he told Parker that he had a debt of £3 10s., which he owed to one of the other side, and that he should not like to go against his creditor; upon which Parker put down £4, and witness gave him 10s. change. This witness, however, was rather shaken on cross-examination.

It appeared also that Samuel Greenhalgh, a confectioner, who had lost custom since the previous election in 1857, by reason of exclusive dealing, mentioned this fact to Mr. John Openshaw, an active supporter of Mr. Peel, when the

(*a*) But see now 26 Vict. c. 29 (*ante*, p. 37, *in nota*).

latter canvassed him; Mr. Openshaw replied that the witness must tell him about that after the election. The witness consequently wrote a letter to Mr. Openshaw subsequently to the election, stating the above fact, and that he had suffered additional loss by having voted for Mr. Peel at the present election. Witness subsequently saw Mr. Openshaw, and requested him to lend him £120. Mr. Openshaw said he would see about it; and subsequently a Mr. Binns called on Mr. Openshaw at witness's request, when Mr. Openshaw stated that there had been a great deal of bother about the petition, and that nothing could be done for witness. But witness still expected that Mr. Openshaw would fulfil his promise as a gentleman, and make him some remuneration.

This Greenhalgh, it appeared, also canvassed a voter named Lilley. In the first instance he saw Lilley's wife, who complained that they had £10 worth of horse feed on hand, which they could not dispose of; and that if they did not sell it at the election they would never "get shut of it at all." Greenhalgh promised to find them customers, saying that he was authorized by Mr. John Walker to lay out £10 in horse feed. Mrs. Lilley said she supposed it was for her husband's vote, and Greenhalgh said "yes." Greenhalgh subsequently mentioned to Mr. Peel's supporters, Mr. John Walker and Mr. Assheton, the vice-chairman of Mr. Peel's committee, amongst others, about the horse feed,

saying that the Lilleys were inclined to support Mr. Peel; and that, if they were encouraged, he thought they would. Subsequently to this Mr. Assheton called, and bought and paid for three guineas' worth of the horse feed, saying he would send for it in a few days; but he did not in fact send for it till after the petition was talked about. Mr. John Walker also called, and was anxious to buy some.

It also appeared that one George Furness, a hatter, had been canvassed by Mr. John Openshaw; and by him, and several others of Mr. Peel's supporters, promised custom if he would vote for Mr. Peel. Many of Mr. Peel's supporters did in fact, as the witness (Furness) stated, buy hats of him, though they had not been his customers previously; and some of them *would* pay him £1 for them, though he said he would make his best for 16s. at the outside. The witness applied to Mr. R. Bridge and Mr. R. Oram during the election to lend him £100, and subsequently to John Clarke, who said he was going to the committee, and would mention it to Mr. H. Oram, the captain of the district; that he had no doubt witness might have it; that they were willing to help him, but then witness must declare himself for Peel. In consequence of the above promises to support him in his business, witness voted for Mr. Peel.

It further appeared that a Mrs. Ellen Wynyard was canvassed by a Mr. Barlow, and asked

to put a price on her husband's vote. She said nothing under £100 would do ; and Mr. Barlow then said he would send a Mr. Richard Hacking to her. Mr. Hacking (who was an active supporter of Mr. Peel's) accordingly called, and said it was too much, she must come down. He subsequently called on her husband by appointment, and told him that they could not give anything before the election ; but that, if Wynyard would trust to his (Hacking's) honour, they should not be losers, but gainers ; that he (Hacking) employed 1400 or 1500 hands ; that a word from him would go a long way ; and that he would do his best to induce them to deal at Wynyard's shop.

The same Mr. Hacking, it appeared, canvassed one Robert Lewthwaite. The witness (Lewthwaite) stated that he had had heavy losses, had been obliged to mortgage his house, and would rather remain neutral ; upon which Mr. Hacking said that if the witness was fast for money, and could find security, he would find him money.

James Hurst also deposed that he was offered a fat pig for nothing, by one James Nuttall, if he would vote for Mr. Peel.

During this day's proceedings the Chairman August 2. stated that as the counsel for the petitioners had concluded the cases of individual bribery, the Committee would be prepared to give their opinion upon this branch of the case the follow-

ing morning, which might simplify and shorten the proceedings.

Mr. Serjeant *Parry* reminded the Committee that with regard to the whole of his case he had, when the Committee directed the room to be cleared, still much evidence to offer.

The Chairman stated that if the Committee had made up their minds as to the cases of bribery, the question of agency need not be gone into any further.

The Committee then adjourned.

August 3. At the opening of the proceedings on the following morning, the Committee, after deliberation, resolved, "That they are of opinion that bribery has not been proved in any of the cases brought before them so as to affect the sitting member, irrespective of the question of agency" (a).

Mr. Serjeant *Parry* stated that, after the decision of the Committee, it was hopeless for him to proceed further with the case of the petition; but if the Committee were of opinion that cases of bribery were established, and that the sitting member was not affected by them,

(a) It seems difficult to understand whether the Committee disbelieved the witnesses altogether as to the facts to which they deposed, or were of opinion that the facts deposed to did not amount in law to bribery. An analysis of the principal evidence is given above; the witnesses, except in one or two instances, were not shaken in cross-examination, and most of them were confirmed by the evidence of others and by the general evidence given in the case.

he thought he could produce evidence to affect the sitting member by them.

The Chairman intimated that the opinion of the Committee was, that no proof of agency as regarded the cases of bribery would affect the sitting member.

Mr. Serjeant *Parry* said it would be useless for him, under those circumstances, to offer the further proof of agency, which he was in a condition to do.

The Committee then came to the following Final resolution.
final resolution for report to the House :—

“ That the Right Hon. Frederick Peel, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Bury.”

CASE VIII.

1859.

LEICESTERSHIRE, NORTH.

The Committee was appointed on the 27th of July, 1859,
and consisted of the following Members :—

William Stirling, Esq., Perthshire,
(*Chairman.*)

John Henry Gurney, Esq., Lynn Regis.	Samuel Trehawke Keke- witch, Esq., Devonshire, South.
Sir Edmund Samuel Hayes, Bart., Donegal.	James Haughton Langston, Esq., Oxford City.

Petitioner :—Rev. William Astley Cave Browne Cave, an
Elector.

Sitting Members petitioned against :—Right Hon. John James
Robert Manners and Edward Bouchier Hartopp, Esq.

Counsel for Petitioner :—Mr. O'Malley, Q.C., Mr. Power,
Q.C., and Mr. Bell.

Agents :—Messrs. Walmisley and Sen, Mr. Hunt, and
Mr. Spooner.

Counsel for Sitting Members :—Mr. Rodwell, Q.C.,
Mr. Mundell, and Mr. C. G. Merewether.

Agents :—Messrs. Helmes, Anton, and Turnbull, and
Mr. Sharkey.

July 29. THE Committee agreed to the first eleven of the
Prelimi- usual preliminary resolutions (a).
nary reso-
lutions.

(a) *Ante*, p. 11.

The petition, after stating that at the last election the Right Hon. John James Robert Manners, commonly called Lord John Manners, Charles Hay Frewen, Esq., and Edward Bouchier Hartopp, Esq., were candidates, and that Lord John Manners and E. B. Hartopp, Esq., were returned, alleged bribery, treating, and undue influence against Lord J. Manners and Mr. Hartopp respectively, and their respective agents, and prayed the House to declare their or either of their elections and returns to be null and void.

Bribery,
treating,
and undue
influence.

Mr. *O'Malley* opened the case.

The evidence in the case relating to bribery was as follows:—

It appeared that Messrs. Harris and Luck, the acknowledged agents of the sitting members, had 100 circulars printed previous to the election, stating that there would be conveyances waiting at the Pack-Horse Inn, Leicester, to take voters to Syston to poll, and requesting their attendance at the Pack-Horse Inn at 7.30 A.M. on the morning of the poll. There was a breakfast provided at the Pack-Horse Inn on that morning, of which many of the voters partook before going to the poll. It was further proved that Messrs. Gray and Lewin had actively canvassed on behalf of the sitting members, that they distributed the above mentioned circulars, and, in several cases, added that there would be a breakfast provided at the Pack-Horse Inn. In several instances it

What not
sufficient
evidence
of bribery.

appeared that the voters, on being canvassed by Messrs. Gray and Lewin, said that they could not vote unless they were paid for their loss of time ; to which Messrs. Gray and Lewin answered that they would be paid, or that it would be "made right." In one instance (Henry Kirk's) the witness was asked, at the same interview, whether he would be put down as a runner ; in another instance (Robert Pinder's) Mr. Lewin said, in answer to the complaint that the witness could not afford to lose a day, "Very well ; we will put you down as an assistant runner." In one instance a packet of circulars was left at the voter's house, for the apparent purpose of distribution, but without any specific instructions for such distribution, which, accordingly, was never made. In another case (George Smith's) the voter had, as it appeared, promised to vote for Mr. Frewen, but stated, on being canvassed, that he would not mind giving Lord J. Manners part of his vote ; to which Messrs. Gray and Lewin replied that, if he would give the rest of it for Mr. Hartopp, "it should be made right." The witness, in consequence of this, voted for the sitting members. In another case (John Palmer's) Mr. Gray canvassed the witness, who said he had promised to vote for Mr. Frewen, whose messenger he was ; upon which Gray said, "We will make it all right, if you will only vote for Lord J. Manners and Mr. Hartopp ; you know we have the power to pull the string," tapping his pocket as he said so.

About twenty or thirty voters, as it appeared, breakfasted at the Pack-Horse on the morning of the poll; Mr. Luck and Messrs. Gray and Lewin were present, and circulars were given to the persons breakfasting, to distribute as they went along the road to the poll—and were, in fact, so distributed. The voters were subsequently conveyed to Syston, and, after having refreshment at the Bull's Head there, the head-quarters of Lord John Manners and Mr. Hartopp, without paying for the same, polled for the sitting members. Most of them remained at Syston during the day, and returned to the Pack-Horse Inn, at Leicester, in the evening, where they again had some refreshment; and subsequently were called into another room and there each paid 4s. for their services, by Mr. Lewin, who had previously gone into the room where they were assembled at the Pack-Horse Inn, and said, "All those whom I have employed as runners come this way, and I will pay you." The above speech was not heard by all; one witness (Edward Dalby) swore that, when he was paid, Mr. Lewin said it was for "his loss of time."

No services were, for the most part, rendered by the people who were thus paid; and in other cases, as it appeared, the services rendered were quite inadequate. The most performed by any one (John Bentley) was to go about thirty times between the poll-booth and the committee-rooms, a distance of about fifty yards, with the

state of the poll ; and some of those paid denied having been employed at all, except so far as to have received the circulars at the breakfast at the Pack-Horse Inn, for distribution, as above mentioned ; and one man (Charles Measures) was so paid, who had gone with Mr. Frewen's party to Syston, and only made up his mind to vote for Lord J. Manners and Mr. Hartopp just before he polled. In another case William Rowley received the same sum, on representing to Mr. Lewin, after the election, that he had gone over to Syston in a trap at his own expense.

There was no secrecy about the manner of the above payments, nor were the sums paid, as it appeared, substantially more than the persons would have earned had they been at their ordinary work ; but it appeared that in several instances Mr. Lewin had called on the witnesses after the election, and when the petition began to be talked about, and requested them to say nothing about the payment.

The number who polled at Syston from Leicester was—for Lord J. Manners, 54 ; for Mr. Hartopp, 54 ; for Mr. Frewen, 157.

No question was raised in the case as to the agency of Mr. Lewin or Mr. Gray, in addition to the circumstances bearing upon their agency, detailed above.

It was proved that the first-mentioned circular, which was in the handwriting of the admitted agent of the sitting members, was

ordered, called for, and paid for by Mr. Gray ; and it was also proved that Mr. Lewin acted as check-clerk for the sitting members at No. 1 booth at Syston, having a register with memoranda on it in his hand, and that he had made objections to voters at the poll on their behalf.

No witnesses were called on behalf of the sitting members.

Mr. *Power* summed up the case on the part of the petitioner. August 2.

Mr. *Rodwell* addressed the Committee on behalf of the sitting members.

Mr. *O'Malley* was heard in reply.

The Committee remained in deliberation during this day. On the following morning they came to the following final resolution for report to the House (a) :— August 3.
August 4.

“That the Right Hon. John James Robert Manners, commonly called Lord John Manners, and Edward Bouchier Hartopp, Esq., are duly elected knights of the shire to serve in this Final resolution.

(a) The Committee divided on the question, “That the Right Hon. John James Robert Manners, commonly called Lord John Manners, and Edward Bouchier Hartopp, Esq., were, by themselves or by their agents, guilty of bribery at the last election for the Northern Division of the county of Leicester.” *Aye*, 1: Mr. Langston; *Noes*, 4: Mr. Gurney, Sir Edmund Hayes, Mr. Kekewich, Mr. Stirling.

present Parliament for the Northern Division of the county of Leicester” (a).

(a) The Committee divided. *Ayes*, 4: Mr. Gurney, Sir Edmund Hayes, Mr. Kekewich, Mr. Stirling; *Noe*, 1: Mr. Langston.

CASE IX.

BOROUGH OF MAIDSTONE.

1859.

The Committee was appointed on the 27th July, 1859, and consisted of the following Members :—

Alexander Murray Dunlop, Esq., Greenock,
(*Chairman.*)

Francis Bernard Beamish, Esq., Cork City.	George Grenfell Glyn, Esq., Shaftesbury.
Sir James Buller East, Bt., Winchester.	George Ward Hunt, Esq., Northamptonshire, North.

Petitioners :—Electors.

Sitting Members :—William Lee, Esq., and Charles
Buxton, Esq.

Counsel for Petitioners :—Mr. Slade, Q.C., Mr. Forsyth,
Q.C., and Mr. Brodrick.

Agents :—Messrs. Baxter, Rose, and Norton.

Counsel for Sitting Members :—Mr. Phinn, Q.C.,
Mr. Johnson, and Mr. Millward.

Agents :—Messrs. Dyson and Co., Mr. John Case, and
Mr. Thomas Wells.

THE Committee agreed to the first eleven of the usual preliminary resolutions (a). July 29.
Preliminary resolutions.

The petition, after stating that at the last Petition.

election William Lee, Esq., Charles Buxton, Esq., John Wardlaw, Esq., and Egerton Vernon Harcourt, Esq., were candidates, and that the two former were returned, alleged bribery, treating, and undue influence against the sitting members and their agents, and prayed the House to declare their election and return to be null and void.

Bribery,
treating,
and undue
influence.

Mr. *Forsyth* opened the case.

August 1.
Bribery
list can-
not be
amended.

At the opening of this day's proceedings, Mr. *Forsyth* applied to the Committee for permission to amend the bribery list which had been handed in, by inserting the name of Thomas Holloway as the person who had bribed James Marjoram in the place of the name of James Bromley, which now appeared in the list.

Mr. *Johnson* was heard against the application.

Mr. *Forsyth* was heard in reply.

The Committee refused to allow the list to be amended.

August 2. At the conclusion of the case, the Committee came to the following final resolutions for report to the House:—

Final reso-
lutions.

1. "That William Lee, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Maidstone."

2. "That Charles Buxton, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Maidstone."

3. "That Henry Smith, an elector, was

proved, on his own admission, to have been bribed by the sum of £10; but there was no proof that such act of bribery was committed with the knowledge or consent of the sitting members or their agents."

4. "That Richard Rose and John Honey, two other electors who voted for the sitting members, were, after having so voted, paid the sum of 25s. each (*a*), as and for travelling expenses, by one Edward Mason; but that in neither case was the payment made by the authority of the sitting members or of their agents."

Mr. *Phinn* applied to the Committee for costs, on the ground that the petition was frivolous and vexatious. Costs refused.

The Committee decided that the petition was not frivolous and vexatious.

(*a*) This sum did not appear to be more than the voters had expended, but it included a charge for loss of time and board.

CASE X.

1859.

CITY OF NORWICH.

The Committee was appointed on the 27th July, 1859, and consisted of the following Members :—

Thomas William Evans, Esq., South Derbyshire,
(*Chairman.*)

John George, Esq., Wexford
County.

Charles Paget, Esq., Not-
tingham.

Hon. Henry George Liddell,
Northumberland.

Christopher Rice Maunsell
Talbot, Esq., Glamorgan-
shire.

Petitioners :—Electors, against the return of Lord Bury and Mr. Schneider.

Counsel for the Petitioners :—Mr. O'Malley, Q.C., Mr. Slade, Q.C., and Mr. Wilkinson.

Agents :—Messrs. Baxter, Rose, and Norton, W. and R. Kittar, and Mr. A. J. Collins.

Counsel for the Sitting Members :—Mr. Phinn, Q.C., Mr. Welsby, and Mr. Garth.

Agents :—Messrs. Bircham and Co., and Messrs. Miller, Son, and Bugg.



July 29. THE Committee agreed to the first eleven of
Prelimi- the usual preliminary resolutions (a).
nary reso-
lutions.

Petition. The petition, after stating that at the last
election for the city of Norwich, William Henry

(a) *Ante*, p. 11.

Schneider, Esq., the Hon. W. Coutts Keppel, commonly called Viscount Bury, Sir Samuel Bignold, Knt., and Charles Manners Lushington, Esq., were candidates, and that the two former were returned, alleged bribery, treating, and undue influence against the sitting members and their agents, and prayed the House to declare their election and return to be null and void.

Bribery,
treating,
and undue
influence.

Mr. *Slade*, Q.C., opened a case of bribery, abandoning the charge of treating and undue influence.

Mr. *Phinn*, Q.C., on behalf of Lord Bury, objected, that as against him the Committee had no jurisdiction to try this petition, because the election now petitioned against had taken place in April, 1859; and since that time Lord Bury had accepted an office of profit under the Crown, whereby his seat had been vacated, and a new writ had issued for a new election, pursuant to 6 Anne, c. 7, s. 26, by virtue of which a new election had been held, and Lord Bury had been returned, and now sat in the House as member for Norwich. That section directs a new writ to issue, as if the member accepting office were naturally dead; and, the seat not being claimed in this petition, it becomes immaterial to inquire into the validity of Lord Bury's return upon that election, inasmuch as, whatever may be the decision of the Committee, he must still retain his seat.

Jurisdiction of
Committee to hear
the petition, al-
though since the
election the mem-
ber return-
ed had vacated his
seat by the
acceptance of an
office under the
Crown, and
had been re-
elected, and now
sat by virtue of
such re-
election

Mr. *Slade*.—The petition has been referred to this Committee under the powers of 11 & 12 Vict. c. 98, and by that statute they are bound to inquire into it; they have no power to say, “We have no jurisdiction to try the case.” The same question arose in the *Southampton* case, 1 P. R. & D. 47, when the Committee decided that, the petition having been referred to them by the House, they were bound to proceed in the usual way.

The Committee decided that they had jurisdiction to try the petition.

What not
sufficient
evidence of
bribery by
the sitting
member
personally.

A voter named Robert French proved that he had refused to vote for Mr. Schneider, alleging that he had been ill-used by his (Mr. S.’s) party respecting a fire that had occurred on his brother’s premises; and that Mr. Schneider then promised to send him a paper, and to lay the matter before the Committee; and that upon this condition he had voted for Mr. Schneider. Subsequently to the election, having received no letter from Mr. Schneider, and nothing from the Committee, he wrote to Mr. Schneider, and received the following answer:—“I have not forgotten the melancholy story you told me. I shall see Mr. Wilde (a) next week, when I will mention it to him, and forward through him my contri-

(a) Mr. Wilde was the election agent for Mr. Schneider.

bution." Nothing, however, had been actually paid by Mr. Schneider, either to the voter or to his brother.

Other cases of bribery by the agents of the sitting members were proved.

At the meeting of the Committee on this day, July 30,

Mr. *Phinn* stated, on behalf of the sitting members, that after the evidence of bribery which had been adduced, it was not their intention to defend their election.

The Committee then agreed to the following final resolutions for report to the House:—

Final resolutions.

1. "That Henry William Schneider, Esq., was not duly elected a citizen to serve in this present Parliament for the said city and county of the city of Norwich."

2. "That the Right Honourable William Coutts Keppel, commonly called Viscount Bury, was not duly elected, by the election held upon the 30th April, 1859, a citizen to serve in this present Parliament for the said city and county of the city of Norwich."

3. "That the election held upon the 30th April, 1859, for the said city and county of the city of Norwich, is a void election."

4. "That the said Henry William Schneider and Viscount Bury were (by their agents) guilty of bribery at the last-mentioned election."

5. "That it was proved to the Committee that David Storrer, James Gallant, John

Parke, Robert James Dixon, Cain Mann, James Dawson, John Walker, James Viall, Stephen Buxton, and James Steward had been bribed by the payment of" (*the sums set opposite their names*); "but that it was not proved that the above acts of bribery were committed with the knowledge and consent of the said Henry William Schneider and Viscount Bury."

6. "That it appears to the Committee that Robert French voted for the said Henry William Schneider in expectation of receiving a contribution, alleged by the witness to have been (a) promised to him by the said Henry William Schneider, towards losses incurred by his brother by fire. It further appears that the said Henry William Schneider did, by a letter of the 28th of May, subsequent to the said election, undertake to forward, through his agent, a contribution; but that no contribution was actually paid. The Committee, however, are not satisfied, on the entire evidence, that this was intended as a corrupt agreement on the part of the said Henry William Schneider."

(a) The Committee divided upon the question that the words "alleged by the witness to have been" stand part of the question. *Ayes*, 4: Mr. Evans, Mr. Liddell, Mr. George, Mr. Talbot; *Noes*, 1: Mr. Paget. The main question was then put, and carried upon a similar division.

CASE XI.

BOROUGH OF CHELTENHAM.

1859.

The Committee was appointed on the 28th July, 1859, and consisted of the following Members:—

Right Hon. Lord Stanley, Lynn Regis,
(*Chairman.*)

Edward Fellowes, Esq., Huntingdonshire.	Francis Charles Hastings Russell, Esq., Beds.
William Pollard-Urquhart, Esq., Westmeath.	Charles Wynne, Esq., Car- narvon District.

Petitioners:—Electors.

Sitting Member:—Colonel Francis William Fitzhardinge Berkeley.

Counsel for Petitioners:—Mr. Slade, Q.C., Mr. W. H. Cooke, and Mr. H. James.

Agents:—Messrs. Baxter, Rose, and Norton, Mr. Gwinnett, and Mr. G. Michelwright.

Counsel for Sitting Member:—Mr. Phinn, Q.C., Mr. Serjeant Pigott, and Mr. J. J. Powell.

Agents:—Mr. R. H. Wyatt, Mr. Chesshire, and Mr. W. Boodle.

THE petition, after stating that at the last Petition. election Colonel Francis William Fitzhardinge Berkeley and Charles Schreiber, Esq., were candidates, and that the former was returned, alleged the improper reception and rejection of

Colourable votes on various grounds, and that the majority for Colonel Berkeley was only colourable, the real majority of legal votes being for Mr. Berkeley. Bribery, Schreiber. It charged the sitting member and his agents with bribery, treating, and undue influence. Scrutiny. influence, and finally prayed a scrutiny, and the seat for Mr. Schreiber.

July 30. On the assembling of the Committee,
 Petition · Mr. *W. H. Cooke* stated that within the last
 must be signed by few days it had been discovered that the Town-
 signed by Clerk of Cheltenham had omitted to sign the
 two elec- register, as he was required to do by the 6th
 tors on the register. Victoria, c. 18, s. 48. This had been omitted
 Where no legal regis- to be done for several years; there was, conse-
 ter, peti- quently, now no legal register for Cheltenham
 tion with- in existence (*a*). It was necessary that the
 drawn. petition should be signed by two persons who
 were on the register—*i.e.*, the legal register; but
 no legal register being in existence, this requi-
 sition of course could not be and had not been
 complied with. Under these circumstances, he
 felt it would be useless to occupy the time of the
 Committee; and he would, therefore, withdraw
 the petition.

Where
 petition
 charging
 bribery
 is with-
 drawn,
 Commit-
 tee will
 examine
 agents on
 both sides
 as to the
 grounds of
 the with-
 drawal.

The Committee, after deliberation, decided to examine the agents as to the grounds of the withdrawal of the petition.

The petition was then read.

(*a*) But see *Rogers on Elections* (9th edition), p. 486-488. And see 6 Vict. c. 18, s. 27.

Mr. *Slade* stated that, after having examined the evidence, he was of opinion that the charges of bribery were not of a gross character, but resolved themselves into the payment of the travelling expenses of voters, instead of providing conveyance for them, as directed by the 21 & 22 Vict. c. 87. He therefore withdrew the charges of bribery, and did not propose to prosecute the petition further.

The agents of the petitioners and sitting member were then examined by the Committee, who came to the following final resolutions for report to the House:—

1. “That Colonel Francis William Fitzhardinge Berkeley is duly elected a burgess to serve in this present Parliament for the borough of Cheltenham.” Final resolutions.

2. “That, having examined the agents on both sides, in order to ascertain the circumstances under which the petition was withdrawn, the Committee are of opinion that the circumstances attending the forbearance to prosecute the charges contained therein do not appear to call for any special remark.”

CASE XII.

1859.

CITY OF LIMERICK.

The Committee was appointed on the 28th July, 1859, and consisted of the following Members :—

James Milnes Gaskell, Esq., Wenlock,
(*Chairman.*)

Ralph William Grey, Esq., Liskeard.		Taverner John Miller, Esq., Colchester.
Allen Elliott Lockhart, Esq., Selkirkshire.		Meaburn Staniland, Esq., Boston.

Petitioner :—Jas. Spaight, Esq., an unsuccessful candidate, against the return of Major Gavin.

Counsel :—Mr. Slade, Q.C., Mr. Welsby, Mr. Bourke, and Mr. Lloyd.

Agents :—Messrs. Holmes, Anton, and Turnbull.

Counsel for Major Gavin :—Mr. Phinn, Q.C., Mr. Serjeant Pigott, Mr. Gordon Allen, and Mr. Barry.

Agents :—Mr. Baker and Mr. O'Donnell.



July 30. THE Committee agreed to the first eleven of the
Prelimi- usual preliminary resolutions (a).
nary reso-
lutions.

Petition. The petition, after stating that at the last election for the city of Limerick, Major George Gavin, Francis W. Russell, Esq., and the petitioner, were candidates, and that the two former were returned, alleged that the major

rity for Major Gavin was obtained by violent, illegal, unconstitutional, fraudulent, and outrageous means; that previous to, at, and during the election, an extensive, organized, premeditated, and connected system of violence, intimidation, riot, agitation, and outrage was established, by means of armed mobs in the city, by Major Gavin and his agents, for the purpose of terrifying voters, and deterring them from voting in favour of the petitioner, and to compel them by fear to vote for the said Major Gavin; that inflammatory placards were posted in and about the city, calling upon all persons belonging to the Roman Catholic religion to unite, and for ever put down Protestant ascendancy, the petitioner, and the 'orange-jury-packing government of Lord Derby; that on the day of polling the approaches to the polling-booths were crowded by such armed, tumultuous mobs, who offered gross insults to the electors coming to vote for the petitioner; that the electors who voted for the petitioner were assaulted, and put in fear of their lives, whereby many other electors were deterred from voting for the petitioner; that others were violently compelled to vote for Major Gavin. That, in consequence of such violent and tumultuous proceedings, the military and police were called out; but that such force was insufficient to prevent such mobs, instigated by Major Gavin and his friends, from setting all order and authority at defiance; that but for this system

Violence
and intimi-
dation.

Insulting
and intimi-
dating
voters.

Bribery, treating, and undue influence. of riot, violence, threats, and intimidation, the petitioner would have been returned. It then alleged bribery, treating, and undue influence against Major Gavin and his agents, and prayed the House to declare his election and return to be null and void, and to declare Major Gavin incapable of sitting in the present Parliament.

August 1. Mr. *Slade* opened the case.

The name of a person active in the election may be asked, although he belongs to a class, none of whom are mentioned in the lists of persons who have exercised undue influence. Mr. *Spaight*, the petitioner, being called, stated that on the day of polling he saw some of the Roman Catholic clergy, after 2 o'clock, take an active part in the proceedings of the election. He was then asked, who they were.

Mr. *Phinn* objected that no clergyman was charged with undue influence, there being none mentioned in the list.

Mr. *Bourke* urged that this was a part of the general case, and

The Committee decided that the question might be put.

Committee will not inquire into reasons why a voter is not produced as a witness, although it may be on account of intimidation. The witness was then examined as to the difficulty he had in getting witnesses to come in support of the petition, in consequence of the representations made to them of the dangers they would incur if they gave evidence against the sitting member; and he named David Meany as a person whom he was anxious to produce, but who entreated that he might not be involved in it.

Mr. *Phinn* objected to any inquiry into matters which occurred two months after the election.

The Committee thought it was not desirable to go into these details if they could be avoided, and that they could not go into the reasons why the petitioner could not produce the witness. A direct application ought to be made to them for that purpose, if his evidence were necessary.

It was proved that up to 1 or 2 o'clock on the polling-day everything went on quietly, but about that time the people began to collect in mobs in different quarters of the town; and, at a place called Matthew's Bridge, which was in the road to the principal polling-booth, a considerable disturbance took place by a crowd of persons armed with stones, who were actively pelting cars going to the polling-booth with voters for the petitioner. The military and police were called out, the Riot Act was read, and the military were ordered to charge and clear the bridge, which they did. It further appeared that the sitting member was on horseback during the polling-day, visiting the different booths, and, according to the statement of some of the witnesses, was accompanied by crowds of noisy and disorderly persons, whom he was encouraging; but this he distinctly denied, saying that he had not hired any mob or any leaders, and that no disorderly proceedings had taken place in his presence during the hours of polling. No application was ever

What not sufficient evidence of riot and intimidation to avoid the election.

made to the Sheriff, who was present, to adjourn the poll, nor was any complaint made to him that voters were unable to vote. The evidence as to the amount of disturbance in and about the polling-booth was very conflicting, some of the witnesses saying that it was the quietest election ever known at Limerick, and that, in fact, a larger number of voters had polled than had ever been known before; whilst others deposed that voters could not get to the polling-booth until the way had been cleared by the military and police.

August 4. The Committee came to the following resolutions for report to the House:—
Final resolutions.

1. "That Major Gavin is duly elected a citizen to serve in this present Parliament for the county of the city of Limerick."

2. "That certain riotous and tumultuous proceedings took place at and after the last election for the said city; but that it was not proved to the Committee that such proceedings took place at the instigation or with the sanction of Major Gavin or his agents."

3. "That no application was made to the returning officer for an adjournment of the poll in consequence of such proceedings, and that it was not proved to the Committee that they were of such a duration or of such a character as to prevent the votes of the electors from being recorded."

CASE XIII.

BOROUGH OF PRESTON.

1859.

The Committee was appointed on the 2nd day of August, 1859, and consisted of the following Members :—

John Henry Philipps, Esq., Haverfordwest,
(*Chairman.*)

Hon. George Henry Charles Byng, Middlesex.	Abel Smith, Esq., Hertfordshire.
Richard Davey, Esq., West Cornwall.	Lieut.-Colonel Wynn, Montgomeryshire.

Petitioners :—1. Electors, against the return of Mr. Grenfell.

2. Electors, against the return of Mr. Cross.

Sitting Members petitioned against :—Charles Pascoe Grenfell, Esq., and Richard Assheton Cross, Esq.

Counsel for 1st Petition and R. A. Cross, Esq. :—Mr. Knowles, Q.C., and Mr. Johnson.

Agents :—Messrs. Gregory and Co., Mr. Gilbertson, Mr. Watson, and Mr. Turner.

Counsel for 2nd Petition and C. P. Grenfell, Esq. :—Mr. Phinn, Q.C., Mr. Serjeant Pigott, and Mr. Barry.

Agents :—Mr. Baker, Mr. W. J. Plant, and Mr. Goodier.



THE Committee agreed to the first eleven of August 4. the usual preliminary resolutions (*a*).

Preliminary resolutions.

1st petition.

The first petition (of James Carr and others), after stating that at the last election Richard Asheton Cross, Esq., John Talbot Clifton, Esq., and Charles Pascoe Grenfell, Esq., were candidates, and that R. A. Cross, Esq., and C. P. Grenfell, Esq., were returned, alleged bribery, treating, and undue influence against Mr. Grenfell and his agents, and prayed the House to declare his election and return to be null and void.

Bribery, treating, and undue influence.

2nd petition.

The second petition (of John Hawkins and others), after stating as in the first petition, alleged bribery, treating, and undue influence against Mr. Cross and his agents; that one of the booths was not open till nearly one hour later than that directed by law, and was not kept open the statutable time; and that, in consequence, several voters who were there ready to vote were unable to vote, and did not vote at the said election. It prayed the House to declare the election and return of Mr. Cross to be null and void.

Bribery, treating, and undue influence.

Poll-booth not open at the statutable time.

Mr. *Knowles* opened the case of the first petition.

What not sufficient evidence of agency.

On the question of the agency of one Edward Ambler, it was proved that Mr. Ambler acted as the chairman of the local committee for conducting the election of Mr. Grenfell in Trinity Ward. These local committees were not regular executive committees, but were composed of any political friends of Mr. Grenfell who chose

to attend the meetings; and each Ward carried on the business of the election in its own way, appointing its own clerk, canvassers, &c., independently of the other Wards, and without any interference on the part of Mr. Grenfell. On the polling-day Mr. Ambler was at the Trinity Ward committee-rooms, giving out the voting papers received from the central committee-room. He also paid the canvassers, and the clerk of the Trinity Ward committee-rooms, after the election, with money paid to him by Mr. Grenfell's agent for election expenses, through the election auditor. But this, it appeared from the election auditor's evidence, was done in consequence of the election auditor suggesting to Mr. Grenfell's agent for election expenses that the name of some person in each ward should be given to him, in whose favour he might draw the necessary cheques (a).

Mr. *Knowles* submitted that sufficient proof of agency had now been given to admit evidence of treating (b).

Mr. Serjeant *Pigott* was heard to contend that no sufficient evidence of agency had yet been given.

Mr. *Knowles* was heard in reply.

(a) The office of election auditor is abolished by 26 Vict. c. 29.

(b) Treating may now be proved before agency. 26 Vict. c. 29, s. 8.

Mr. *Phinn* was further heard on the question of agency.

The Chairman, after the Committee had deliberated, stated that they were of opinion that there was not sufficient evidence of agency to admit of proof of treating (a).

What
sufficient
evidence
of agency.

Mr. Grenfell's agent for election expenses was then called, and on his proving that Mr. Ambler was duly appointed in writing Mr. Grenfell's agent for the expenses incurred previous to the nomination; that he was in communication with the chairman of the central committee from the commencement of the canvass up to the day of election; and that he was the person in Trinity Ward to whom he (Mr. Grenfell's general agent for election expenses) looked as the responsible person to incur expenses on Mr. G.'s behalf, and furnish an account of them in Trinity Ward;

The Committee intimated that sufficient evidence of Mr. Ambler's agency had been given.

Paying
canvassers
not bri-
bery.

The evidence of bribery related principally to the payment of canvassers, who, although *bonâ fide* employed, and having left or obtained

(a) The Committee divided on the question, "That there is sufficient evidence of agency to enable the Committee to enter upon the charge of treating." *Ayes*, 2: Colonel Wynn, Mr. Smith; *Noes*, 3: Mr. Byng, Mr. Davey, Mr. Philipps.

leave from their ordinary callings for the purpose of canvassing, in some cases, as it appeared, unknown to the parties employing them, neglected their duty, and spent the money given them as canvassers in the various public-houses.

The evidence of treating related principally to refreshment ordered for the canvassers after their day's work was done at different public-houses, there not being room for them at the committee-rooms, although it appeared that in some cases, unknown to Mr. Grenfell's party, they had taken in their friends, who were not canvassers or otherwise employed, to partake of the same.

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At the conclusion of the case of the first petition, the Committee came to the following final resolutions for report to the House :—

1. "That Charles Pascoe Grenfell, Esq., is duly elected a Burgess to serve in this present Parliament for the borough of Preston" (a).

2. "That it was proved to the satisfaction of the Committee, that an attempt was made to bribe Thomas Catterall by the offer of thirty shillings, by Robert Constantine ; but it was not proved that this attempt was made with the

(a) The Committee divided upon the question, "That C. P. Grenfell, Esq., was, by his agents, guilty of bribery at the last election for the borough of Preston." *Ayes*, 2: Mr. Smith, Colonel Wynn; *Noes*, 3: Mr. Byng, Mr. Davey, Mr. Philipps.

knowledge or consent of the said Charles Pascoe Grenfell, Esq., or his agents."

3. "That a payment of one pound, in eight half-crowns, was made by Thomas Rydings to Thomas Taylor, to induce him to record his vote for the said Charles Pascoe Grenfell, Esq.; but it was not proved that this payment was made with the knowledge and consent of the said Charles Pascoe Grenfell, or his agents."

4. "That it appeared to the Committee that an objectionable system of employing paid canvassers has prevailed for many years in the borough of Preston, amongst whom persons having votes are included; but that neither the number of the voters so employed on the present occasion, nor the circumstances under which they were engaged, lead to the conclusion of any systematic attempt to influence the election by their employment."

2nd petition.

On the parties being called in,

Mr. *Phinn* stated that the evidence in support of the petition against Mr. Cross being of a similar character to that which the Committee had already heard and decided to be insufficient, he did not propose to proceed further with the petition against Mr. Cross.

Final resolution,
2nd petition.

The Committee then came to the following final resolution for report to the House:—

5. "That Richard Assheton Cross, Esq., is duly elected a burgess to serve in the present Parliament for the borough of Preston."

CASE XIV.

BOROUGH OF BEVERLEY.

1859.

The Committee was appointed on the 3rd August, 1859,
and consisted of the following Members :—

John Morgan Cobbett, Esq., Oldham,
(*Chairman.*)

Charles Cavendish Clifford, Esq., Isle of Wight.	Charles Jasper Selwyn, Esq., Cambridge University.
William James Garnett, Esq., Lancaster.	John Benjamin Smith, Esq., Stockport.

- Petitioners* :—1. Electors, against the return of Mr. Walters.
2. Electors, against the return of Mr. Edwards.
3. Edward Anchmuty Glover, an unsuccessful candidate, against both sitting members.
4. Electors, against the return of Mr. Edwards.

Counsel for Mr. Edwards and for the first Petition :—
Mr. Slade, Q.C., Mr. W. H. Cooke, and Mr. John Clerk.

Agents :—Messrs. Baxter, Rose, and Norton, Messrs.
England and Bainton.

Counsel for Mr. Walters and for the 2nd and 4th Petitions :—
Mr. Pickering, Q.C., and Mr. Tindal Atkinson.

Agents :—Mr. S. Crosse and Mr. A. Crosskill.

Counsel for Mr. Glover :—Mr. Welch and Mr. Best.

Agents :—Messrs. Robertson and Simson and
Mr. Mark Shephard.

August 5. **THE** Committee agreed to the first eight of the Preliminary resolutions. usual preliminary resolutions (*a*), including in resolution 8 "the sitting member," as well as the agents.

1st petition. The first petition (of electors), after stating that at the last election Henry Edwards, Esq., J. R. Walker, Esq., R. Walters, Esq., and E. Auchmuty Glover, Esq., were candidates, and that Mr. Walters and Mr. Edwards were returned, alleged bribery, treating, and undue influence against Mr. Walters and his agents, and prayed the House to declare his election and return to be null and void.

Bribery, treating, and undue influence.

2nd petition. The second petition (of electors) alleged bribery, treating, and undue influence against Mr. Edwards and his agents, and prayed the House to declare his election and return to be null and void.

Bribery, treating, and undue influence.

3rd petition. The third petition (of Mr. Glover) alleged bribery, treating, and undue influence against the sitting members and their agents, and prayed the House to declare their election and return to be null and void, and that they or either of them might be declared incapable of being elected in the present Parliament.

Bribery, treating, and undue influence.

4th petition. The fourth petition (of electors) alleged that

Henry Edwards, Esq., one of the sitting members, and James Robert Walker, Esq., one of the unsuccessful candidates, by themselves and their agents, entered into a corrupt agreement in reference to the expenses of the election. It alleged bribery, treating, and undue influence against both of them, concluding with a prayer that the election and return of Mr. Edwards might be declared void, and that they might both be declared incapable of sitting in the present Parliament.

Corrupt agreement with regard to the expenses of the election. Bribery, treating, and undue influence.

Mr. *Slade* opened a case of bribery and treating against Mr. Walters.

It was proved that during the polling-day, and on previous days, two persons named Daniel Boyes and Robert Taylor were stationed at an empty house in a public street, called the Toll Gavel, to which house all persons had free access, and where money was given to voters, by either Taylor or Boyes, upon their promising to vote for Mr. Walters; some of these voters stated that they had been engaged as runners during the election, but they were not otherwise proved to have been so employed.

Evidence of bribery.

With reference to the agency of Boyes, he was proved to have come to London to ask Mr. Walters to stand for Beverley; to have met him (with a number of others) at the station on his arrival there; to have gone with him (with the others) in procession to his lodgings, from the windows of which he ad-

What sufficient evidence of agency.

dressed the people when Mr. Walters was present ; and to have been in constant communication with him during the election. On the other hand, Mr. Walters stated that he had never seen Boyes, except in company with other persons ; that he had never directly or indirectly employed him in any way to make payments of any sort or description ; that he knew nothing of what went on at the empty house in the Toll Gavel ; that Mr. Todd, a solicitor of Hull, was his agent for election expenses, and that he had no other agent, because, finding his canvass among the electors to be very successful, he did not think it necessary to have either agent or committee.

Mr. *Pickering*, in support of the second and fourth petitions, then opened a case of bribery against Mr. Edwards.

Employment of messengers not bribery.

It appeared that a clerk of Messrs. England and Bainton, the duly appointed agents for Messrs. Walker and Edwards, had engaged about twenty-three persons to act as messengers, runners, and poll-clerks at the election, some of whom were voters and some not ; but when engaged it did not appear that anything was said to them about voting. These persons were all paid by Messrs. England and Bainton, in proportion to the number of days they had been employed ; and some who claimed pay were refused, because they had done nothing. To account for the number of persons employed as

messengers, it was proved that up to the 26th of April it was not supposed that there would be any real opposition to the return of Messrs. Edwards and Walker, and, as the poll was fixed for the 29th, it became necessary to send out a great many circulars and letters to out-voters in a very short time.

At the termination of the case the Committee came to the following final resolutions for report to the House (a) :—

1. "That Ralph Walters, Esq., is not duly elected a burgess to serve in this present Parliament for the borough of Beverley." Final resolutions.

2. "That Ralph Walters, Esq., was, by his agents, guilty of bribery at the last election for the borough of Beverley."

3. "That the last election for the said borough, so far as regards the return of Ralph Walters, Esq., is a void election."

4. "That Henry Edwards, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Beverley" (b).

5. "That it was proved to the Committee that John Best, John Pougher, James Stokell,

(a) Mr. Glover's petition was not proceeded with.

(b) The Committee divided upon the question, "That Henry Edwards, Esq., was, by his agents, guilty of bribery at the last election for the borough of Beverley." *Aye*, 1: Mr. Smith; *Noes*, 4: Mr. Clifford, Mr. Garnett, Mr. Selwyn, Mr. Cobbett.

William Anderson, William Ruston, William Armstrong, Isaac Bentley, James Turner Bishoprick, John Watson, and Thomas Kirk the younger, were bribed by the payment of” (*various sums by Daniel Boyes, or Daniel Boyes and Robert Taylor*); “but that it was not proved such bribery was committed with the knowledge and consent of the said Ralph Walters, Esq.”

6. “That it was proved to the Committee that Charles Stamford had been bribed by a payment of 30s. by David Nutchey; that Thomas Whitelock was offered the sum of £5 for his own vote, and the sum of £21 for the votes of himself and four other voters who worked in the same place with him, by Jacolina Wilkin; that William Loft was offered the sum of £3 for his vote by James Baker; but that it was not proved that such bribery was committed with the knowledge and consent of the sitting member, Henry Edwards, Esq., or of his agents.”

7. “That it appears to the Committee that an objectionable practice of employing voters as messengers or runners has prevailed in the borough of Beverley; but that neither the number of voters so employed at the last election, nor the circumstances under which they were engaged, lead the Committee to believe that an attempt was made corruptly to influence the election by such means.”

8. “That it was proved to the Committee that at the last election for Beverley, bribery was carried on systematically by two persons of

the names of Daniel Boyes and Robert Taylor, and the Committee recommend that these two persons should be prosecuted by order of the House."

9. "That the Committee recommend that no writ for the borough of Beverley do issue until the evidence taken before this Committee be printed."

CASE XV.

1859. BOROUGH OF KINGSTON-UPON-HULL.

The Committee was appointed on the 5th August, 1859,
and consisted of the following Members:—

Mr. C. W. G. Puller, Herts,
(*Chairman.*)

Sir Andrew Agnew, Wig-		Colonel Fulke Greville,
tonshire.		Longford County.
Sir M. T. Farquhar, Hert-		Lord Naas, Cockermouth.
ford.		

Petitioners:—Electors, against the return of
Joseph Hoare, Esq.

Counsel for Petitioners:—Mr. Serjeant Pigott, Mr. Rodwell,
Q.C., and Mr. Thompson.

Agents:—Messrs. Dyson and Co., and Mr. W. H. Moss.

Counsel for the Sitting Member:—Mr. Slade, Q.C.,
Mr. Forsyth, Q.C., and Mr. A. Peel.

Agents:—Messrs. Baxter, Rose, and Norton.



August 6. THE Committee agreed to the first eleven of
Prelimi- the usual preliminary resolutions (a).
nary reso-
lutions.

Petition. The petition, after stating that at the last
election for the borough of Kingston-upon-Hull,

(a) *Ante*, p. 11.

James Clay, Esq., Joseph Hoare, Esq., and John Harvey Lewis, Esq., were candidates, and that the two former were returned, alleged bribery, treating, and undue influence against Mr. Hoare and his agents, and prayed the House to declare his election and return to be null and void.

Bribery,
treating,
and undue
influence.

Mr. Serjeant *Pigott* opened a case of bribery by the colourable employment of messengers.

Richard Mitchell, a witness, was asked during his examination-in-chief, whether he had not told one Richard Greaves that he went to the central committee-room and applied to be put down as a runner, and that if he was not put down he should not vote for Mr. Hoare. The witness replied that he had not said so either to Greaves or to any one else. Richard Greaves being then called,

Parties
may
adduce
evidence
to contra-
dict their
own wit-
ness in a
material
particular,
although
he be
neither
hostile nor
unfair (a).

Mr. *Forsyth* objected, and contended that he could not be called to contradict the evidence given by the last witness, unless it was clear that such witness was hostile, and had given his evidence unfairly, which he contended was not the case.

Mr. Serjeant *Pigott*.—The object of a committee like the present being to get at the truth, it is impossible strictly to apply the rules of evidence as laid down by the courts of law, and therefore the witness ought to be called to con-

(a) See *Bury* case, *ante*, p. 41.

tradict a former witness in an important particular material to the merits of the inquiry.

The Committee decided that the witness might be called to prove that the fact was not as the former witness had stated.

Upon a question of bribery by employment as a messenger, a witness who went first to the committee-rooms of one party, and then, having failed to obtain employment there, to those of the opposite side, may be asked his intention in so doing.

John Biggins, a voter, proved that he had gone to ask for employment as a runner at the joint committee-rooms of Messrs. Clay and Lewis, but was told that they were full: upon which he went to one of Mr. Hoare's committee-rooms, and was there employed by the Committee, and paid £1 2s. 6d. for his attendance during the week of the election. He had voted for Mr. Hoare. On his re-examination by Mr. Rodwell, he was asked, "Supposing you had got employment at Mr. Clay's committee-room, should you have voted for Mr. Hoare?"

Mr. *Forsyth* objected to the question, on the ground that Mr. Rodwell was putting a hypothetical case to the witness, and then asking him how he should vote under such circumstances, which it was not competent for him to do.

Mr. *Rodwell* contended that, as the witness had offered his services first to Mr. Clay's committee, and then, on their refusal, had offered himself to Mr. Hoare's committee, and had voted for Mr. Hoare—not having, as he said, promised his vote to any candidate, the question was admissible, with the view of ascertaining what his object was in going to Mr. Clay's committee-room.

The Committee decided that the question as proposed could not be put, but that the witness might be asked what his intentions were when he went to Mr. Clay's committee-room.

The facts proved in the case appear sufficiently in the following final resolutions of the Committee which were reported to the House :—

August 11.
Final resolutions.

1. "That Joseph Hoare, Esq., is not duly elected a burgess to serve in this present Parliament for the borough of Kingston-upon-Hull."

2. "That the last election for the said borough of Kingston-upon-Hull, so far as regards the election of Joseph Hoare, Esq., is a void election."

3. "That it has been proved before the Committee, that at the last election for the said borough as many as four hundred and eighty-seven persons were employed on behalf of the said Joseph Hoare, Esq., and four hundred and ninety-three persons on behalf of Messrs. Clay and Lewis, as messengers, canvassers, clerks, booth agents, and check-clerks."

Bribery by colourable employment of messengers.

4. "That of the persons so employed on behalf of the said Joseph Hoare, Esq., more than three hundred persons appear to have been voters for the said borough, and to have received from the agents of the said Joseph Hoare, Esq., in respect of such employment, sums varying in amount from 2s. 6d. up to £3 5s."

5. "That amongst the voters so employed were the following persons, to whom the several

sums were paid which are set opposite their names" (a) :—

6. "That some of the said voters were allowed to continue at their usual work during all the time of their employment, and to come only at their dinner-hour and in the evening, but, nevertheless, were paid at the same rate as those who attended all day; some were so old and infirm as to be incapable of rendering any efficient service; some were paid for a longer number of days than that for which they were engaged, or during which they were in attendance; while none of them appear to have rendered adequate services or work for the payment which they received."

7. "That it does not appear to the Committee that any act of bribery was committed with the knowledge or consent of the said Joseph Hoare, Esq., who appears to the Committee to have always shown the greatest anxiety to check any irregular proceedings in the conduct of the election."

(a) The names of the persons were Francis Smith Jackson, John Clarkson, John Robinson, John Turpin, William Shakesby, John Duncan, Thomas Duncan, John Francis Watson, Percival Beautyman, Charles Welcome Beautyman, Thomas Goold, William Commander, Richard Rolliston, James Furniss, George Johnson, John Lankester, Robert Young, George Newmarch, William Tait, George Lockwood, George Hollingsworth, Thomas Linsey, John Biggins, George Brown, and James Guy.

8. "The Committee desire to draw the attention of the House to the circumstance that Mr. William Henry Moss, election auditor for the borough of Hull, appeared as agent for the petitioner, and that he took an active part in obtaining evidence in support of the petition: it appears to the Committee that such a course of proceeding is open to grave objections" (a).

(a) The office of election auditor is abolished by 26 Vict. c. 29.

CASE XVI.

1860.

CITY OF CARLISLE.

The Committee was appointed on the 21st of February, 1860, and consisted of the following Members :—

John Morgan Cobbett, Esq., Oldham,
(*Chairman.*)

Robert Wygram Crawford, Esq., London.		Lord Robert Montagu, Huntingdonshire.
Marquis of Hartington, Lancashire North.		Colonel Pakenham, Antrim.

Petitioners :—Electors, against the return of Sir James Graham and Mr. Lawson.

Counsel for the Petitioners :—Sir Frederick Slade, Q.C., Mr. Rodwell, Q.C., and Mr. John Clerk.

Agents :—Mr. C. B. Hodgson and Messrs. Lyon, Barnes, and Ellis.

Counsel for the Sitting Members :—Mr. Power, Q.C., and Mr. Welsby.

Agents :—Mr. Cooper, Mr. Thomas Wright, and Mr. John Irving.



Feb. 23. THE Committee agreed to the first eleven of the
Preliminary resolutions (a).

Petition. The petition, after stating that at the last

(a) *Ante*, p. 11.

election for the city of Carlisle, Sir James Graham, Bart., Wilfrid Lawson, Esq., and W. H. Hodgson, Esq., were candidates, and that the two former were returned, alleged bribery, treating, and undue influence against Sir James Graham and Mr. Lawson, and their agents, and prayed the House to declare their election and return to be null and void.

Bribery,
treating,
and undue
influence.

Sir F. *Slade* opened a case of bribery against the sitting members, by the payment of money to voters under the pretence of paying their travelling expenses; and a case of treating by their agents, in inviting voters to a breakfast on the polling-day, whence they were taken to the poll in carriages hired for that purpose.

Joseph Gallery, the landlord of the Weavers' Arms, in Carlisle, was called as a witness, and proved that a room was engaged at his house as a committee-room on behalf of the sitting members.

Feb. 24.
In treating lists, it is not sufficient to insert the name of the landlord of the inn or public-house only, but the name of the inn or public-house must also be given.

Mr. *Power* objected to this evidence being given in order to establish a case of treating, because only the name of Joseph Gallery was inserted in the treating lists handed in; and the name of the public-house at which the treating was alleged to have taken place was not mentioned as it ought to have been, the rule being that such lists must specify time and place (*a*).

(*a*) See *Rogers on Elections* (9th ed.), p. 447.

Mr. *Rodwell* contended that the object of handing in such lists was to give information to the other side as to what instances of treating it was proposed to rely upon, and, inasmuch as in this case the name of the landlord of the house was given, and the time of treating also, sufficient information was thereby afforded.

Mr. *Power* having replied,

The Committee decided that evidence of treating at the Weavers' Arms could not be gone into, and refused to amend the lists.

Payment
of travel-
ling ex-
penses and
for loss of
time not
bribery.

With reference to the payment of travelling expenses, it was proved that, before payment of travelling expenses was promised to any voter, the question of the legality of such payment was raised amongst some of the supporters of the sitting members, at their committee-room, when Mr. Jackson, Mr. Mounsey, and other lawyers were present; and the majority were of opinion that such expenses were legal payments (*a*). Upon this, Mr. Wright, a solicitor at Carlisle, the conducting agent for the sitting members, who had been informed that one Thompson had promised his vote to the sitting members, and that he was then working about fifty miles off upon the railway, wrote to him the following letters:—

(*a*) See *ante*, p. 31 (*in notâ*).

“To Mr. Jas. Thompson,
“Barrasford Post Office.

“Hexham, 20 April, 1859.

“Dear Sir,

“The election at Carlisle will take place the latter end of next week. I understand you will support Sir James Graham and Mr. Lawson, the liberal or the blue candidates. Write to say where a letter will find you the beginning of next week, and I will write you on what day to come. We will, of course, pay your expenses.

“Yours faithfully,

“Thomas Wright.”

“Carlisle, 26 April, 1859.

“Dear Sir,

“You must be in Carlisle on Thursday night first, as the election will take place on Friday first; you must not fail to be here. On arrival call upon me at the Coffee House Hotel.

“Yours truly,

“Thomas Wright.”

These letters were received by Thompson, who came to Carlisle and voted for the sitting members; but his expenses had not been paid, and the letters were afterwards given up by him to Mr. John Irving, by whom they were produced before the Committee. Thompson swore that a part of the second letter had been cut off since he gave them up (*a*); and he

(*a*) This letter was upon half a sheet of paper.

further stated that, in answer to the one he received first, he had replied, saying he should not come without being paid for his expenses and for loss of time, in answer to which he received the letter dated April 26. Mr. Wright swore that he had never seen any letter from Thompson asking for his expenses, and further, that the letters now produced were posted and sent by him in their present condition and in the order of their date. Mr. Irving also stated that he had produced the two letters before the Committee in exactly the same condition as when he received them, and that he had only obtained them from Thompson to produce them to the Committee, that a different version of their contents might not be given.

It further appeared that a sum of £1 had been paid by a Mr. Jackson, an agent of the sitting members (a), to a voter named M'Pherson, under the following circumstances:—

At the time of the election the voter was working as a brickmaker about thirteen miles from Carlisle, having several men and boys in his employment. Whilst there he was canvassed for his vote on behalf of the sitting members by a Mr. E. Henderson, to whom he promised his vote, and then asked whom he ought to apply to for his expenses, to which Henderson replied that he would pay them if no one else

(a) It appeared he had the management of the conveyances for the use of the out-voters.

did. The evidence was conflicting upon the question whether he then said anything about remuneration for the loss of time of himself and men.

On the day of election M'Pherson was met at the station by Henderson, who went with him to the poll, and afterwards, when he (M'Pherson) told Henderson that he ought to be paid about 24s. for his expenses, and for the loss of time of himself and men, Henderson went to the committee-room at the Coffee House Hotel, and left the voter with Mr. Jackson, telling him that he wanted his travelling expenses. Jackson then asked him what his expenses were, and he (M'Pherson) made the amount from 17s. to 19s. The railway fare was found to be about 2s. Jackson stated that he had given the man a sovereign, he having stated that he was a struggling man; and that he had given it to him more out of charity than anything else. About a week after the election, the money was got back from the voter by Mr. Jackson, he having received a letter from Mr. Wright, raising a doubt whether the payment of travelling expenses to voters was in fact legal.

In support of the charge of treating, it was proved that Mr. Jackson had invited about a score out-voters to breakfast at his house on the day of the election; that they came, and were afterwards driven from thence direct to the polling-booth, in conveyances provided for that pur-

What not
sufficient
evidence
of treating.

pose from Carlisle ; but it appeared that all the persons so invited had long before promised their votes to the sitting members ; that all of them lived in Jackson's neighbourhood ; that most of them were old supporters of the liberal cause ; that, as to some of them, they would have to pass Mr. Jackson's house on their way to the poll, and, as to others, that it was about a mile out of their way to come to Oak Bank, where Mr. Jackson resided. It was further proved that Mr. Mounsey, the solicitor of Sir James Graham, but who was not paid for his services at the election, had invited four out-voters to a breakfast at his house on the way to the poll, such out-voters having all promised their votes about three weeks before the invitation was given, and all being resident in the neighbourhood of Mr. Mounsey's house.

Feb. 25.

Mr. *Power*, on behalf of the sitting members, contended that the payment proved to have been made by Jackson to M'Pherson was made *bond fide*, and without any intention to contravene the Act of Parliament, either on the part of the giver or the receiver, and, therefore, it could not be bribery ; because, to make it so, it must have been given with the corrupt intention of inducing the elector to vote differently than he otherwise would have done ; if it was not given corruptly, then the giving the money would not be the offence of bribery within the meaning of the Corrupt Practices

Prevention Act, 17 & 18 Vict. c. 102, s. 4. He referred to the *Cambridge* case, Wolf. and D. 35; *Ipswich* case, Wolf. and D. 173, 177; *Cooper v. Slade*, 6 H. of L. Cas. 746; *Rogers on Elections* (9th ed.), 334, 335.

The witnesses for the sitting members having Feb. 27. been called and examined, and also the sitting members themselves,

Sir Frederick *Slade* replied on behalf of the petitioners, and argued that, by the decision of the House of Lords in *Cooper v. Slade*, the word "corruptly" must be taken to mean what the law forbids; and, as the giving of money by Jackson to a voter was against the meaning and intention of the Act, it was in itself an act of bribery, which rendered the election void.

The Committee then came to the following Feb. 28. final resolutions:—

1. "That the Right Hon. Sir James Robert Graham, Bart., is duly elected a citizen to serve in this present Parliament for the city of Carlisle." Final resolutions.

2. "That Wilfrid Lawson, Esq., is duly elected a citizen to serve in this present Parliament for the city of Carlisle" (a).

(a) The Committee divided on both these resolutions. *Ayes*, 3: Mr. Cobbett, Marquis of Hartington, Mr. Crawford; *Noes*, 2: Lord Robert Montagu, Colonel Pakenham. These two resolutions were reported to the House.

3. "That James M'Pherson was paid the sum of £1 by William Jackson, an agent of the sitting members ; but that such payment was not made from any corrupt motive" (*a*).

(*a*) The Committee divided upon the question that the words "but that such payment," &c., be added. *Ayes*, 3: Mr. Cobbett, Marquis of Hartington, Mr. Crawford; *Noes*, 2: Lord Robert Montagu, Colonel Pakenham.

CASE XVII.

BOROUGH OF WEYMOUTH.

1860.

The Committee was appointed on the 21st of February, 1860, and consisted of the following Members :—

Edward C. Egerton, Esq., Macclesfield,
(*Chairman.*)

William Patrick Adam, Esq., Clackmannan.		Sir Edward Grogan, Bart., Dublin City.
John George Dodson, Esq., East Sussex.		Hon. Frederick Lygon, Tewkesbury.

Petitioner :—William Lockyer Freestun, the defeated
Candidate.

Counsel for the Petitioner :—Mr. Phinn, Q.C., and
Mr. Serjeant Pigott.

Agents :—Mr. Baker, Mr. Charles, and Mr. John Tizard.

Counsel for the Sitting Members :—Sir Frederick Slade, Q.C.,
Mr. Pickering, Q.C., and Mr. W. H. Cooke.

Agents :—Messrs. Baxter, Rose, and Norton, and Mr.
Spofforth, Mr. Frederick C. Steggall, Mr. Richard Hare,
and Mr. Alfred Cornelius.



THE Committee agreed to the first nine of the usual preliminary resolutions (*a*), omitting in resolution 3 the words, “or offers or promises of money or other valuable consideration,” and the words, “or to whom such offers were so made.”

(*a*) *Ante*, p. 11.

Petition. The petition, after stating that at the last election Lord Grey de Wilton, Robert Brooks, Esq., Robert James Roy Campbell, Esq., and the petitioner, were candidates, and that the two former were returned, alleged bribery, treating, and undue influence against the sitting members and their agents. It complained of the improper rejection and reception of votes upon various grounds, and it prayed the House to declare the election of the sitting members to be null and void.

Bribery, treating, and undue influence.

Mr. *Phinn* opened a case of bribery.

The evidence given in support of the petition was, in the main, of the most contradictory and unsatisfactory nature. In the only cases in which the evidence given of acts of bribery seemed credible, the cases either broke down or the evidence of agency was exceedingly weak, only amounting to the alleged agents being seen occasionally going in and out of the committee-room on the day of the election in common with hundreds of others, being seen occasionally canvassing in company with the sitting members, and being active in getting up voters to the poll.

No witnesses were called on behalf of the sitting members.

Feb. 28. At the conclusion of the case the Committee came to the following final resolution for report to the House:—

“That Robert Brooks, Esq., and Arthur Herbert Edward Holland Grey Grosvenor, commonly called Viscount Grey de Wilton, are duly elected burgesses to serve in this present Parliament for the borough of Weymouth and Melcombe Regis.” Final resolution.

CASE XVIII.

1860.

ROSCOMMON COUNTY.

The Committee was appointed on the 22nd February, 1860,
and consisted of the following Members :—

Alexander Murray Dunlop, Esq., Greenock,
(*Chairman.*)

Hon. Gerard James Neil, Rutlandshire.		John St. Anhyn, Esq., West Cornwall.
Henry Pease, Esq., South Durham.		Patrick Boyle Smollett, Esq., Dumbartonshire.

Petitioners :—Electors, complaining of the undue election
and return of Captain Thomas William Goff.

Counsel for the Petitioners :—Mr. O'Malley, Q.C., Mr. Phinn,
Q.C., Mr. Mundell, and Mr. O'Dowd.

Agents :—Messrs. Holmes, Anton, and Turnbull, and
Mr. Sharkey.

Counsel for Captain Goff :—Sir Frederick Slade, Q.C.,
Mr. Forsyth, Q.C., and Mr. Burke.

Agents :—Messrs. Baxter, Rose, and Norton, and
Mr. Henry French.



Feb. 24. THE Committee agreed to the first eleven of
Prelimi- the usual preliminary resolutions (a).
nary reso-
lutions.

(a) *Ante*, p. 11.

The petition, after stating that the petitioners were registered electors for the county of Roscommon, and voted at the last election, when Colonel Fitzstephen French, Captain Thomas William Goff, Edward King Tenison, and Patrick Dignam, Esqrs., were candidates, and that the two former were returned, alleged bribery, treating, and undue influence against Captain Goff and his agents, before, at, and during the election. It then alleged that, after the teste of the writ of summons to Parliament, by virtue whereof the said election was held, Captain Goff, his friends, agents, and persons employed on his behalf, did directly and indirectly promise and give money, meat, drink, &c., to voters, in order that Captain Goff might be elected, and also for being elected. It then concluded by praying the House to declare the election and return of Captain Goff to be null and void.

Petition.

Bribery, treating, and undue influence.

Bribery after the teste of writ.

Mr. *O'Malley* opened a case of bribery against Captain Goff and his agents, by an extensive system of hiring cars from voters nominally for the purpose of bringing up country electors to the poll, but which cars were not in fact either used or required, and also by the hiring of houses for lodging the electors; and a case of treating by providing meat, drink, and entertainment to electors at the houses where they were lodged in the towns of Roscommon, Boyle, Castlereaugh, and Athlone.

Feb. 27. During the progress of the first two days' sittings of the Committee, it appeared by the evidence of the election auditor, and of persons who had sent in their bills to the conducting agent for Captain Goff, that none of these bills had come before the election auditor; that his accounts were not yet made up; that he had not received a list of the different sums paid directly by the conducting agent of Captain Goff to different persons; and, further, that a great many payments made by him as auditor were so made on getting receipts from different parties without the production of the bills of particulars. Upon this,

When bills and claims sent in to the agent of the sitting member have not been duly forwarded to the election auditor, the Committee will order their production (a).

Mr. *O'Malley* asked the Committee to order all accounts not sent in to the auditor by Mr. French, the conducting agent of Captain Goff, to be produced and handed to the Committee-clerk, for the inspection of the petitioners, on the ground that these accounts had been improperly withheld from the auditor. He cited the *Lambeth* case, Wolf. and Dew, 131; and 17 & 18 Vict. 102, ss. 15, 18, & 26.

Mr. *Forsyth*.—We have produced all the bills sent in to the agent and auditor which have been paid; those bills we have adopted; but we are not called upon to produce claims made upon us for goods supplied to one

(a) The office of election auditor is abolished, but the returning officer to some extent occupies his place. 26 Vict. c. 29.

person by the order of another, because they have been made out to Captain Goff, and sent in to his agent, Mr. French. The statute 17 & 18 Vict. c. 102, s. 16, directs all persons having any charge or claim against any candidate, in respect of the election, to send in his bill within a month from the day of the declaration of the election to the authorised agent of the candidate; and, by s. 17, such bills are within three months from the declaration of the election to be sent in to the election auditor by the candidate or his authorised agent; but this section does not make it incumbent upon a candidate to send in bills for work done or goods supplied on the order of any person whose authority the candidate entirely disavows.

Mr. *O'Malley*, in reply.—The 17th section directs that the candidate or his agent is to state at the time when he sends in any bills to the auditor, whether he admits the whole, or, if not the whole, what part of them he admits; the repudiated bills might therefore have been marked as disallowed; but here the evidence is that Mr. French said to the persons sending in their accounts, "Be quiet, and your bill will be paid." He does not repudiate them in any way. It is assumed on the other side that the conducting agent and the agent to receive accounts are the same; but that is not so; *Grant v. Guinness*, 17 C. B. 190, shows that the agent to receive accounts is not an agent for election expenses. It appears that receipts alone of such parts of

the bills as were paid were sent in to the election auditor, and we want the bills as sent in to Mr. French, in order to obtain information which we ought to have had long ago.

After deliberation it was resolved:—"That the Committee are of opinion that the petitioners are entitled to be put in the same position as that in which they would have been had the 16th sect. of 17 & 18 Vict. c. 102 been complied with ; they therefore order the production of all bills and accounts given in to any agent on behalf of the sitting member within one month of the declaration of the poll, or, in the case of a deceased party, within the time specified after probate or letters of administration have been taken out."

March 2.

An agent proved to have hired houses for lodging voters may be asked whether he did so to obtain the owner's vote.

Joseph Burke, an admitted agent for the sitting member, having stated that houses had been hired in Roscommon by himself for the accommodation of country voters brought up to the poll, and that it was necessary to bring them to the town over-night, lest they should be kidnapped by the other side, was asked, " Did you hire a single house in Roscommon for the purpose of obtaining the vote of the keeper of the house ?"

Mr. *O'Malley* objected to the question, because the intention of the witness in hiring these houses could not be evidence ; that was a question for the Committee to decide upon after hearing the facts of the case.

Mr. *Forsyth* contended that evidence of the hiring of these houses had been given in support of the charges of bribery against the house-keepers; and therefore the intention of the sitting member's agent in contracting for the houses might be inquired into when evidence had been given of the necessity for such hiring.

The Committee decided that the question might be put.

From the evidence adduced in support of the petition, it appeared that a number of public-houses, eating-houses, and private houses, had been hired by the agents of Captain Goff at Roscommon and Boyle; some of them were used for tally houses—that is, places where the voters were collected together and taken up to the poll; at others, voters who had been brought up over-night from the country districts were accommodated with lodging and supplied with refreshments upon the order of certain persons alleged to be agents of the sitting member; the bills for the hire of the houses and the refreshments supplied had all been sent in to Mr. Henry French, the conducting agent for the sitting member. No part of them had been paid except charges for car-hire, but none of them had been repudiated; and many of the witnesses swore that Mr. French had stated that the balance of their bills could not be paid until after the petition had been decided; the bills themselves had been retained by Mr. French,

Facts
sufficient
to consti-
tute
treating.

and some of them were produced upon the order of the Committee, whilst others were left in Ireland. It further appeared that from some of the houses ale and porter had been obtained, which were placed in the streets in barrels, and consumed by the mob. Very considerable expense, as it appeared, had been incurred for the hire of about 150 cars from all the car owners at Boyle, Roscommon, and elsewhere; some of these car owners were hotel keepers, and their charges for such hire had been sent in to Mr. French, included in the general bills sent in by them as hotel keepers, and had been paid through the election auditor, the remainder of the bills remaining unpaid; almost all the persons whose houses and cars had been hired on account of the sitting member had voted for him at the election.

On the part of Captain Goff, some of the persons alleged to have ordered refreshments for voters at the different lodging-houses were not called; but Mr. French and the other admitted agents of Captain Goff, who were called, stated that many of the voters had to come from considerable distances, and that, as there had not been a contested election in the county of Roscommon for some years, and the popular party were in possession of the seat, it became necessary to bring in the voters the night before the election, or else they would have been kidnapped by the mob; but it appeared that the houses had been hired some days before the

election, when there was no symptom of any violence, and that, in fact, no violence or intimidation of any kind against the supporters of Captain Goff had been shown. They also stated that in every instance they had told the owners of the houses to lodge the voters only, and not to find them any meat, drink, or any refreshment; but no evidence was given as to what arrangements were made for supplying necessities to the voters at the houses where they were lodged; and although it was proved that some of the persons who were stated to have ordered refreshments for voters at the different lodging-houses were in attendance, they were not called as witnesses. With reference to the payments for hire of cars, they stated that, although they hired one hundred and fifty-five cars in the county, that number was not sufficient, and that they were obliged to hire others from Leitrim and Westmeath, and to employ carts and other vehicles to bring up the voters; and yet they had not enough to bring them all up in the two days allowed for the election, as they were very much scattered over the country.

Mr. *Phinn*, on behalf of the petitioners.—The March 2. offence of treating is created by certain statutes founded upon the treating resolutions of 1677 (9 Com. Jour. 411). The first enactment upon the subject was the 7 Will. III. c. 11, founded upon those resolutions; and from that Act the provisions as to treating in 35 Geo. III. c. 29,

s. 19 (Irish) were taken. This Act was repealed by 4 Geo. IV. c. 35 as to counties of towns, but is still in force as to counties. In the case of *Ribbans v. Crickett*, 1 B. & P. 264, it was decided that giving entertainment to voters, after the teste of the writ, is made illegal by 7 Will. III. c. 35, which differs in some respects from the Irish Act; but both expressly prohibited the giving of entertainment to voters by a candidate after the teste of the writ. The 35 Geo. III. c. 29 appears to go further than the 17 & 18 Vict. c. 102 as to treating, because it forbade any candidate, *his friends* or agents, or any persons employed on his behalf, to give, directly or indirectly, any meat, drink, &c., to any voter; and, in the latter part of the section, it is enacted that any person so giving shall be incapable of serving in Parliament for such place. By this word *so* must be meant a giving directly or indirectly, either by himself, *his friends* or agents, in the manner pointed out in the early part of the section. In this statute the word corruptly is omitted; but, in the first place, the case of *Cooper v. Slade*, 6 H. of L. Cas. 646, shows what is meant by the word "corruptly" in the Corrupt Practices Prevention Act, viz., anything done in contravention of that Act, and forbidden by it; and, in the second place, it is unnecessary to prove treating within the meaning of that Act at all, for the mere giving of meat, drink, &c., by a candidate, his friends or agents, is treating within the 35 Geo. III. c. 21.

But, supposing there is no evidence of treating under the Irish Act after the teste of the writ, there is abundant evidence of bribery and treating within the Corrupt Practices Act, because it is clear that admitted agents of the sitting member, and persons proved to be his agents, had hired houses and cars nominally for the lodging and conveyance of voters, but, in truth, to procure Captain Goff's election, and to obtain the votes of the persons owning the houses and cars ; and further, that refreshments had been supplied to voters at these houses.

Sir F. *Slade*, on behalf of the sitting member. March 3.
 —Questions of bribery and treating are now defined and regulated by the 17 & 18 Vict. c. 102, which enacted, by sect. 4, that a candidate should be guilty of treating, who, by himself or his agent, whether directly or indirectly, provided meat, drink, &c., to any person in order to be elected, or for the purpose of corruptly influencing his vote at an election ; and the vote of any person who corruptly accepts such entertainment is rendered null and void. It is therefore an essential part of the offence of treating that it should be given in order to influence the voter, or for the purpose of being elected ; but nothing of the sort is proved. Here the evidence seems rather to show that it was thought necessary to hire the houses for the accommodation of the voters from the country, to enable them to vote at all ; if refreshments really were given to such voters by order of the sitting member or his agents, it is necessary to prove that this

was done corruptly. The decision in *Cooper v. Slade* shows that by corruptly is meant something which the Act was meant to prohibit; and, therefore, to make a candidate guilty of treating, by himself or his agents, it must be shown that the entertainment was given contrary to the Act of Parliament—that is, in order to be elected, or for being elected, or for the purpose of corruptly influencing some person to give or refrain from giving his vote; but how can that have been the intent, if the object of the sitting member and his agents was to secure the attendance of the voters at the election, which is not forbidden by the Act?

March 4.

At the termination of the case, the Committee came to the following resolutions for report to the House:—

Final
resolu-
tions.

1. “That Thomas William Goff, Esq., is not duly elected a knight of the shire to serve in this present Parliament for the county of Roscommon.”

2. “That the last election for the county of Roscommon, as far as regards the election of Thomas William Goff, Esq., is a void election.”

3. “That Thos. W. Goff, Esq., was, by his agents, guilty of treating at the late election for the county of Roscommon; but that it was not proved that such treating was committed with the consent of T. W. Goff, Esq.”

4. “That the Committee deem it proper to bring under the notice of the House the contra-

vention in this case of the provisions of the Act 17 & 18 Vict. c. 102, requiring the bills and claims against a candidate to be given in to the election auditor, with a statement of the charges in such bills and claims allowed and disallowed. With the exception of the bills for printing, newspaper advertisements, and for professional agency, none of the numerous bills sent in to the agent of Thomas William Goff, Esq., chiefly consisting of charges for car-hire, hire of houses, and supplying meat and drink, generally included in the same bill, were lodged with the auditor. These were retained in the hands of the agent till the sitting of the Committee, when such as had been brought over from Ireland by him were produced on the order of the Committee, receipts only of such particular items in these bills as were paid having been lodged with the auditor."

CASE XIX.

1860. BOROUGH OF GREAT YARMOUTH.

The Committee was appointed on the 22nd February, 1860,
and consisted of the following Members :—

John Henry Philipps, Esq., Haverfordwest,
(*Chairman.*)

Sir Richard Bulkeley, Bart., Anglesea.	Robert Stayner Holford, Esq., East Gloucestershire.
Hon. F. Dudley Fortescue, Andover.	Sir Henry Willoughby, Bart., Evesham.

Petitioners :—Electors.

Sitting Members petitioned against :—Sir Edmund H. K.
Lacon, Bart., and Sir Henry Josias Stracey, Bart.

Counsel for Petitioners :—Mr. Phinn, Q.C., Mr. Power,
Q.C., and Mr. Johnson.

Agents :—Mr. Newton Finch and Mr. F. S. Costerton.

Counsel for the Sitting Members :—Mr. O'Malley, Q.C.,
Mr. Rodwell, Q.C., and Mr. Clerk.

Agents :—Messrs. Baxter, Rose, and Norton, and
Mr. Charles Corry.



Feb. 24. THE Committee agreed to the first eleven of the
Preliminary resolutions (a).
lutions.

(a) *Ante*, p. 11.

The petition, after stating that at the last Petition.
 election for the borough of Great Yarmouth
 Sir Edmund H. K. Lacon, Bart., Sir Henry J.
 Stracey, Bart., Edward William Watkins, Esq.,
 and Adolphus William Young, Esq., were can-
 didates, and that the two former were returned,
 alleged bribery, treating, and undue influence Bribery,
 against the sitting members and their agents, treating,
 and prayed the House to declare their election and undue
 and return to be null and void. influence.

Mr. *Phinn* opened a case of bribery against
 the sitting members, by the payment (through
 their agents) of money to voters ; and a case of
 treating, by the giving refreshments to voters
 at meetings of the Conservative party, at some
 of which the sitting members were present.

Alfred Alexander, a witness, having sworn Evidence
 that one J. J. Savage had given him £15 to of con-
 vote for the sitting members, and that he had versation
 seen Mr. Savage since receiving a Speaker's with sup-
 warrant to attend the Committee, was asked posed
 what passed upon that occasion. agent after
termina-
tion of his
agency in-
admissible.

Mr. *O'Malley* objected to the question, con-
 tending that, even if the agency of Savage had
 been proved, which was not the fact, his agency
 terminated with the election ; and nothing said by
 him afterwards to the witness could be evidence.

Mr. *Johnson* urged that, if he could show, as
 he proposed to do, that Savage had been tam-
 pering with the witness after the election, such
 evidence would be admissible.

The Committee decided that the question could not be put.

Feb. 25.

Evidence of bribery may be given, although the person alleged to have bribed be not identified with any one named in the bribery list.

In the bribery list, Alfred Harpley, a voter, was alleged to have received the sum of £10 as a bribe from John Cooper. Harpley, being called as a witness, proved that, being confined to his house by an affection of the eyes, he had been canvassed by the sitting members, who came to his house in company with several persons whom he did not know; that he then promised them his vote; and that, just before the election, he was called upon by a person whom he did not know and should not recognise again, but whom he described as a tall, stout man. He was then asked what that person had said or done on that occasion.

Mr. *Rodwell* objected to this question, because the name of this person, whatever it was, had not been proved, nor had his identity been established with any of the persons whose names had been handed in to the Committee as having offered bribes.

Mr. *Johnson* contended that, as several persons had come to the voter's house with the sitting members to canvass for his vote, and as some person had afterwards visited him there, he ought to be at liberty to pursue the inquiry, and prove by the evidence of the witness what had passed between himself and the person spoken of.

The Committee decided that they would not stop the inquiry at this stage.

The witness then proved that the person, whoever it was, gave him £10, and that he voted for the sitting members.

Mr. *Rodwell* then applied to the Committee to strike off the evidence of this witness from the notes of the short-hand writer, because it was not proved that this payment of £10 had been made by any person named in the bribery list.

Mr. *Power* contended that the evidence ought to be retained.

The Committee decided that, for the present, the evidence should remain upon the notes.

W. Gooch, a witness, swore that, in consequence of some conversation at Sir E. Lacon's office, more than twelve months before the election, he had promised his vote to Sir E. Lacon's party if Sir E. L. should put up again. He was then asked, "What was this conversation about?"

Feb. 27.
Conversations respecting a vote, occurring long before the election, or any vacancy, is not admissible.

Mr. *O'Malley* objected to the question, contending that, as this conversation had taken place between the witness and other persons not shown to be in any way connected with either of the sitting members, and had occurred long before the election, or any vacancy in the representation, it could not be admissible evidence upon this inquiry.

Mr. *Johnson* contended that, as the conversation, whatever it was, had induced the witness to promise his vote to the sitting member, he ought to be allowed to proceed with the examination.

The Committee decided that the evidence was not admissible.

Facts not
sufficient
to con-
stitute
agency.

It was proved that sums of money had been paid to different voters by John Thomas Savage, John Cooper, William Spilling, W. Beales, and Isaac Shuckford. To establish the agency of these persons, it was proved that Savage, who was the landlord of the Fish Stall House, in Yarmouth, was seen with Sir E. Lacon on his canvass; that he assisted in hiring men to watch the committee-rooms of the sitting members; that he was seen at the committee-rooms; and that a meeting was held at his house; but Sir E. Lacon, the sitting member, being called, distinctly denied ever having seen him at the committee-room devoted to his more immediate friends, and disavowed any knowledge of Savage having hired any one on his behalf (a).

John Cooper, who was the publisher of the *Norfolk Standard*, was sworn to have been seen going out canvassing during the election, starting from the Conservative committee-room in the morning, with Shuckford, Reynolds, Spilling, and others; and was also seen coming out of the committee-rooms on several occasions.

William Spilling, a carpenter, living at South

(a) The Committee divided upon the question of Savage's agency. *Ayes*, 2: Sir R. Bulkeley, Mr. Fortescue; *Noes*, 3: Mr. Holford, Sir H. Willoughby, Mr. Philipps.

Town, within the borough, was also seen at the committee-rooms, and going out canvassing; and he was visited by Sir E. Lacon at his own house on the day of the election.

The evidence as to Shuckford's agency was the same as Cooper's.

Mr. *Power* having summed up,

Feb. 29.

Mr. *O'Malley* opened the case on behalf of the sitting members, and called Sir Henry Lacon as a witness to rebut certain charges of bribery made against him by one Henry Fayerman.

At the termination of the case, the Committee March 30. came to the following resolutions for report to the House :—

1. "That Sir Edmund Henry Knowles Lacon, Bart., and Sir Henry Josias Stracey, Bart., are duly elected burgesses to serve in this present Parliament for the borough of Great Yarmouth" (a). Final resolutions.

2. "That the sum of fifteen sovereigns was paid to Charles Botwright by John Cooper, to induce him to vote for Sir E. H. K. Lacon and Sir H. J. Stracey" (b).

(a) The Committee divided. *Ayes*, 3: Mr. Holford, Sir Henry Willoughby, Mr. Philipps; *Noes*, 2: Sir R. Bulkeley, Mr. Fortescue.

(b) The Committee divided. *Ayes*, 4: Sir R. Bulkeley, Mr. Fortescue, Mr. Holford, Mr. Philipps; *Noe*, 1: Sir Henry Willoughby.

3. "That William Spilling endeavoured to bribe Henry Pratt Cane by the offer of eight sovereigns."

4. "That Alfred Alexander was bribed by John Thomas Savage with the sum of £15."

5. "That Robert Earl was bribed by William Beales with the sum of £13 to vote for Sir E. H. K. Lacon and Sir H. J. Stracey."

6. "That George Howlett was bribed by Isaac Shuckford with the sum of £13 to vote for Sir E. H. K. Lacon and Sir H. J. Stracey."

7. "That it is not proved that the aforesaid acts of bribery were committed with the knowledge and consent of Sir E. H. K. Lacon and Sir H. J. Stracey, or their agents."

8. "That it is the opinion of this Committee that there are strong grounds for believing that Henry Fayerman, in giving his evidence before the Committee, has been guilty of wilful and corrupt perjury."

CASE XX.

BOROUGH OF DOVER.

1860.

The Committee was appointed on the 29th February, 1860,
and consisted of the following Members :—

James Milnes Gaskell, Esq., Wenlock,
(*Chairman.*)

Sir Arthur William Buller, Devonport.		Edward Howes, Esq., East Norfolk.
Sir John Hanmer, Bart., Flint District.		Arthur Mills, Esq., Taunton.

Petitioner :—Sir William Russell, a defeated Candidate.

Sitting Members :—Admiral Sir Henry John
Leeke and William Nicol, Esq.

Counsel for the Petition :—Mr. Phinn, Q.C., and
Mr. Serjeant Pigott.

Agents :—Mr. Wyatt and Mr. Renshaw.

Counsel for the Sitting Members :—Sir Frederick Slade, Q.C.,
and Mr. W. H. Cooke.

Agents :—Messrs. Baxter, Rose, Norton, and Spofforth, and
Messrs. Wilkinson, Stevens, and Wilkinson.

THE Committee agreed to the eleven usual pre- March 2.
liminary resolutions (a), and also to the follow- Prelimi-
ing :— nary reso-
lutions.

12. "That the practice of courts of law, as

to speeches, as laid down in the 17 & 18 Vict. c. 125, s. 18, be followed in this case."

Petition.	The petition, after stating that at the last election, Sir H. J. Leeke, W. Nicol, Esq., Ralph Bernal Osborne, Esq., and the petitioner, were candidates, and that the two former were
Bribery, treating, and undue influence.	returned, charged bribery, treating, and undue influence against the sitting members and their agents. It then set out the resolution of the House respecting the interference of ministers, passed 10th December, 1779 (<i>a</i>), and averred that, in contravention of such resolution, divers
Inter-ference of ministers.	ministers and servants of the Crown used the powers of office to influence and control the votes of voters, and to procure the return of Sir H. J. Leeke and W. Nicol, and that by such influence the return of the said Sir H. J. Leeke and W. Nicol were obtained, and that by reason thereof the said election and return were wholly void. The petition concluded by praying the House to declare the election and return of the sitting members to be null and void, and also that they were disqualified and incapable to sit for the borough in the present Parliament.

Com-
mittee will
not order
the pro-
duction of
documents
by public
depart-
ments.

Mr. *Phinn* opened the case, and applied to the Committee for an order upon the Treasury

(*a*) 37 Com. Journ. 507. See *Rogers on Elections*, (9th ed.), p. 370.

and the Admiralty, for the production of certain documents, alleged to be material, in support of the allegations in the petition as to the interference of ministers in the election.

Sir *F. Slade* opposed the application, contending that as the sitting members were no parties to the documents prayed for, they could not in any way be affected by the transactions to which they related.

The Committee resolved, after deliberation, "that they declined to make an order upon any public department for the production of the documents called for."

At the sitting of the Committee this day, Mr. *Phinn* applied for a subpoena under the 11 & 12 Vict. c. 98, s. 83, for the attendance of Mr. Stephenson, the head of the contract department of the Treasury, in order to produce a certain contract alleged to have been made with a Mr. Churchward, for the extension of his contract for the Dover Mail Packet Service, which they alleged to be material to the petitioner's case.

March 3.
But they will, under the 11 & 12 Vict. c. 98, s. 83, issue a subpoena *duces tecum* to any officer of a public department that the petitioner wishes to call.

The Committee suggested that the petitioner ought to connect the sitting members with the contract, before the Committee could be asked to summon a witness to produce it.

Mr. *Phinn*.—We ask for the production of certain witnesses and papers to make out our case; this being analogous to a case of bribery, which may always be proved before the agency of the briber is established.

Sir *F. Slade*.—This is, in fact, only a renewal of the application made yesterday, and which the Committee declined to accede to.

After deliberation it was resolved:—

“That the Committee are ready to make an order for the attendance of any witness whom counsel think it necessary to call; but they express no opinion as to the admissibility of any documents which it may be desired to put in.”

March 6.
The Committee will inquire into the alleged interference of ministers of the Crown in the election, at all events if it is proposed to connect the sitting member with it.

Captain the Honorable Swinfen Thomas Carnegie, one of the Lords of the Admiralty in 1859, being called as a witness, was asked:—
“Do you remember at any time being at the Admiralty, in Mr. Murray’s room?” (a).

Sir *F. Slade* objected to this course of examination, on the ground that it was in support of the last allegation in the petition, as to the interference of ministers, but such allegation was entirely foreign to the issue, and there could be no good reason why the Committee should go into it. In a court of law such an allegation might be met by a demurrer, but no such proceeding is allowed before a Committee, and no cause can be shown why the allegation should be amended or expunged. If the statements contained in it be true, ministers ought to be

(a) Mr. Murray, it appeared, was the private secretary to the First Lord of the Admiralty; and Mr. Churchward, it also appeared, was present in the room at the time.

impeached; but the sitting members are not affected by them, if proved. Section 5 of 17 & 13 Vict. c. 102, defines what is meant by undue influence, and enacts what shall be the punishment for the offence; but even if ministers were guilty of undue influence, it would not be a ground for impeaching the validity of the election. In the *Stamford and Gloucester* cases (1848), committees were specially appointed to inquire into the conduct of Peers at an election, and report thereon. In the *Worcester* case, 3 Dougl. 254, where the petitioner complained of the interference of a Peer in the election, the Committee, it is true, decided that they were bound by the words of their oath to hear the evidence, as they were sworn to try the matter of *the petition*; but now, by 11 & 12 Vict. c. 98, s. 68, Committees are sworn well and truly to try the petition, &c., and are to be taken to be a select Committee, to try and determine the merits of *the election and return* referred to them. That being so, are they bound to hear evidence that cannot affect the return? Clerk's *Election Law*, 382. In the *Peterborough* case (1848), it was desired to go into the question of undue influence exercised by the Fitzwilliam family; but the Committee refused to hear the evidence, and the House appointed a Committee to inquire into it.

But even if it be proved that Churchward was influenced unduly, by whom was he influenced? Certainly not by either of the sit-

ting members ; and the Committee has only the power to unseat a member for bribery, treating, or undue influence, when committed by the sitting members or their agents.

Mr. *Phinn*.—The 17 & 18 Vict. c. 102, s. 3, enacts that every voter who shall receive any money, valuable consideration, office, or employment, for himself or for any other person, for voting or agreeing to vote, is to be deemed guilty of bribery ; and it is as a link in the chain of evidence in proof of such bribery, that the question objected to is put. Section 2 of the 11 & 12 Vict. c. 98, which defines what is meant by an election petition, enacts that the petition may complain of the undue election or return of a member, or that no return has been made according to the requisition of the writ, *or of special matters contained in the return* ; and by s. 86, the Committee to whom the petition is referred, is to try the merits of the election or return complained of in *such* petition.

The Chairman here inquired if the petitioner proposed to prove the agency of Churchward ; and, this question being answered in the affirmative, the question was allowed.

Where a corrupt agreement to return A. is alleged, but in the event B. becomes a candi-

Mr. *Phinn* then asked the witness, what Churchward said to him.

Sir *F. Slade* objected to the question, as inadmissible, because the sitting members were not then in the field, and therefore the conversation, whatever it was, could not affect them.

Mr. *Phinn*.—If Churchward entered into a corrupt contract to return one person, and that person not coming forward, he returns another under the same arrangement, is not such other person answerable? If Mr. Murray had agreed with Churchward to get 100 voters at Dover, ready to vote for a man to be named at a future time, would not such a corrupt contract be evidence against the person when named, although he were not actually a candidate when the contract was made? We propose to prove that Churchward was not only a briber, but was bribed himself. In the *Worcester* case, 3 Dougl. 255, it was objected that the Committee could not go into evidence concerning the interference of a peer in the election, because that was a matter of privilege not essential to the merits of the election; but the Committee considered they were bound to hear the evidence. Again, in the *Hertford* case, P. & K. 546, the interference of Lord Salisbury was one of the grounds of the petition, and evidence in support of it was heard. There is, therefore, nothing in the objection that, at the time when the conversation in question took place, the sitting members were not in the field.

Sir *F. Slade*, in reply.—If a member returned be petitioned against for bribery, and the briber tells another candidate to start, because such member will be unseated on the ground of bribery, which afterwards happens, can it be said that such candidate could be unseated, he having had no connection whatever with the

date in the place of A., evidence of such agreement can be given before the candidature of B. commenced.

previous bribery? Clearly not. So here, the sitting members not being candidates at the time when this conversation took place, it cannot be gone into as against them.

The Committee resolved—"That the question might be put."

Where the interference of ministers of the Crown in the election is alleged, conversations between the witness and the private secretary of one of the ministers are admissible in evidence as part of the *res gestæ*.

Captain Carnegie was then further examined by Mr. Phinn, and was asked—

"Had Mr. Churchward ever been referred to as a person of influence at Dover?"

Sir *F. Slade* objected to this line of examination, because if any conversation with Mr. Murray was to be gone into against the sitting members, Mr. Murray ought to be called, that an opportunity of cross-examining him might be afforded.

Mr. *Phinn*.—I say that the acts and declarations of Murray are admissible as part of the *res gestæ*, being in the nature of evidence to prove not only the bribery of Churchward, but also a part of the arrangement by which the return of the sitting members was to be procured. The petition contains three propositions, and in support of either of them this evidence is admissible. 1st. That the Government unduly exercised its influence to return the sitting members; if this be proved, there is no occasion to prove agency, to render the election of the sitting members void. 2ndly. That Churchward himself was bribed, and bribed to bribe others; and here, no doubt, agency must be proved at some

time, but not in the first instance, 4 & 5 Vict. c. 57. 3rdly. To establish a case of statutory undue influence; and here again we must prove agency, pursuant to 17 & 18 Vict. c. 102, ss. 5 and 36. If the election were proved to be void by reason of the undue influence of Government, it would not disqualify the sitting member. *Worcester*, 3 Dougl. 239; *Hertford*, P. & K., 541; *Dublin*, A.D. 1831.

Sir *F. Slade*.—Those cases were all decided upon the principle that what was done was done at the election itself; but that is not the case here, where the matter complained of took place before the election, and, therefore, before the petitioners can give in evidence any act of Mr. Murray, they must prove agency; and, moreover, his acts and declarations in the absence of Churchward are inadmissible.

The Committee decided that the examination might proceed (a).

The witness was then asked whether he had a letter from Mr. Murray of the 5th of April.

Sir *F. Slade* objected to the production of any private letter from Mr. Murray, considering that the letter was written when the witness was a candidate for Dover, and before the time when the sitting members became candidates.

Where interference of ministers in the election is alleged, letters from the private secretary of one of the ministers are admissible, although

(a) The Committee divided upon this question. *Ayes*, 4: Sir J. Hanmer, Sir A. Buller, Mr. Gaskell, Mr. Mills; *Noe*, 1: Mr. Howes.

written
before the
candida-
ture of the
sitting
members.

Mr. *Phinn* contended that the letter ought to be produced, on the same principle as the examination of the witness had been allowed.

The witness stated that he would only produce these letters under the authority of the Committee. He then stated, in answer to questions by the Committee, that he had already produced these letters before the Select Committee on Public Contracts; so that, in fact, publicity had been given to the letters now sought to be produced.

The Committee were of opinion that the letters should be produced (*a*).

March 7.
Where
name of
briber on
the bri-
bery list is
stated as
A., evi-
dence of
bribery by
B. will not
be allowed.

On John James Bishop, alleged to have been bribed by G. Baker, being called and examined, Sir *F. Slade* objected, during the cross-examination, to the Committee proceeding with this case, as the witness had not been bribed by G. Baker, but by some person not on the list, and no application had been made to have the list amended.

Semble,
where a
case of
bribery
comes out
in the
course of
the inves-
tigation,
an applica-
tion to the
Com-
mittee
should be
made at
once.

Mr. *Phinn, contra*.—The 4th preliminary resolution contemplates cases which may arise during the progress of the inquiry, with which the parties could not be reasonably supposed to be previously cognisant. Such a case as the present may fairly be said to fall within this

(*a*) The Committee divided, *Ayes*, 4: Sir J. Hanmer, Sir A. Buller, Mr. Gaskell, Mr. Mills; *Noes*, 1: Mr. Howes.

resolution, even although it was known yesterday who was the person alleged to have bribed Bishop (a).

The Committee resolved, that further evidence in this case was inadmissible, and that the evidence already given should be struck off the notes.

Upon the allegations of bribery, it was proved that the persons, whose names are reported in the second final resolution of the Committee, had each received the money therein mentioned from a publican in Dover, one Bromley, or his wife, in his house. Mrs. Bromley had gone away, and could not be found. Bromley himself denied all knowledge of any such payments; and a Mr. Wilkinson, the election agent for Mr. Nicol, one of the sitting members, stated that no money had been paid to Bromley on account of the alleged payments to the voters, nor had any claim whatever been made by him; and further, that he, as such agent, was never told that the men alleged to be bribed, who were Folkestone men, would not vote unless they were paid. It was proved that the sitting members had held a meeting at Bromley's house, called by advertisement, but it was not proved that anybody paid for the use of the room.

What not sufficient evidence of bribery by agents of the sitting members.

(a) It appeared that the petitioner's counsel knew on the previous day by whom Bishop had been bribed.

What not sufficient evidence of interference by ministers of the Crown in the election.

In support of the allegation of ministerial influence, it was proved that a Mr. Churchward, who had for some years been the contractor for the Dover Mail Packet Service, had had his contract renewed for eight years, from June 1855; and, as his contract would thus expire in June, 1863, he had, early in 1859, applied to the Treasury for a further extension of his contract. The Treasury had called upon the Admiralty to elicit from Churchward what he wanted; and on the 24th of February they had reported in favour of an extension of the contract, whilst the Postmaster-General, to whom the Treasury had referred the matter for information, reported against its extension.

On the 4th of April a dissolution of Parliament was announced. Between the 1st and the 4th of that month Sir W. Joliffe, one of the Secretaries to the Treasury, called upon Sir S. Northcote, the Financial Secretary, and said that, as an election was likely soon to take place, the application of Mr. Churchward, who was a man of great influence at Dover, had better be disposed of before the election, or kept till after. Subsequently to that interview Sir S. Northcote made a minute on the papers that it should stand over for the present. The matter, however, was eventually decided in Mr. Churchward's favour, pending the election, with Sir S. Northcote's sanction, and after he (Sir S. N.) knew of a letter from the private secretary of the First Lord of the Admiralty to the Assistant

Secretary of the Treasury, to the effect that they were anxious to expedite Churchward's matter, that he might go down to canvass at Dover. Churchward himself, it appeared, was at the Treasury before the 15th of April, the day on which the extension of the contract was granted, and had an interview with Sir S. Northcote; but the letter from the private secretary of the First Lord was not referred to at that interview.

It appeared by the evidence of Captain Carnegie, one of the Lords of the Admiralty, that at an interview he had with Mr. Murray, the Secretary to the First Lord, on or about the 4th of April, when Mr. Churchward was present, Churchward addressed him, apparently on the assumption that the witness was going to Dover as a candidate, saying that he would give him every assistance in his power, and then added, that he wanted his contract renewing; that he had been told that he ought to return two members for Dover; and that the Admiralty had wished to defer signing the renewal of the contract until some arrangement was made about returning two members for Dover. It appeared further, that on the 5th and 6th of April, 1859, letters had been received by Captain Carnegie from the First Lord of the Admiralty and Mr. Murray, urging him to start as a candidate for Dover; but that he had only entertained the idea for a very short time, and quite abandoned it after the above conversation with Churchward.

It was proved that Mr. Nicol went down to

Dover about the 7th of April, having been asked to come forward at a meeting held on the 5th or 6th. At the same meeting a resolution was passed, asking Captain Carnegie to come forward, but he declined ; and then, at another meeting, Admiral Leeke, who was also a Lord of the Admiralty, was invited to stand, but it was not proved at what time or at whose suggestion Admiral Leeke came forward as a candidate.

At the close of the petitioner's case,

Sir *F. Slade* stated that, on the part of the sitting members, he should not call witnesses.

Mr. *Phinn* for the petitioner.—In this case some questions have been raised as to what are the duties of an Election Committee. The 11 & 12 Vict. c. 98, s. 2, defines what is to be deemed an election petition, and s. 86 states what the Committee is to decide, and what they are to report to the House ; by s. 87, they may report their decision upon any matter that they think proper to be noticed by the House. Then, by 4 & 5 Vict. c. 57, the Committee are in cases of bribery to receive evidence, and ascertain the fact of bribery, and whether it was committed with the consent of the sitting member. Therefore the Committee here have to report—first, upon the merits of the case ; secondly, upon any subject they may think proper to report upon ; thirdly, upon the fact of bribery.

Now what are the acts of Churchward ? It was most important for him to obtain an

extension of his contract for the Dover Mail Service. On the 31st March the Government is defeated, and on the 4th of April a dissolution of Parliament is announced; on that day Churchward, knowing his influence at Dover, stood out for an extension of his contract, and wrote about it to the Admiralty. Sir Stafford Northcote, being pressed by Sir. W. Joliffe, alters his endorsement as to the question standing over, and extends the contract, which is signed on the 15th, and thereupon Churchward turns over all his votes through Dodd; and from all this the conclusion may fairly be drawn as to the meaning of these transactions. If the Committee decide that the sitting members are responsible for the acts of Churchward, the allegations in the petition as to the ministers exercising the powers of office become unimportant. The precedents of the *Hertford*, *Dublin*, and *Worcester* cases all show that any direct use of the powers of office is against the constitution of this country. There is also the Act of 2 W. & M. sess. 1, c. 7, a sequence to 3 Ed. I. c. 5, which declares that a nomination of a person to serve as a Member of Parliament for the Cinque Ports by the Lord Warden is contrary to the laws and constitution of this realm. There is also a note in Hallam's *Constitutional History*, vol. i. 285, upon this subject, showing how constantly these powers have been exercised by Government.

But is this allegation as to the use of the

powers of office sufficient, if proved, to vitiate the election and return, although it would not render the sitting member ineligible at another election? That is the important question. Influence, direct and indirect, has been proved on the part of the Board of Admiralty ; of that board Sir H. Leeke, one of the sitting members, was a member. By the Board the extension of the contract was signed with Churchward ; and for that act Sir H. Leeke is responsible, together with his colleagues. Now we say that this extension of his contract caused Churchward to alter his original intention as to voting, and induced him to do his best to return the sitting members, instead of giving his support to Mr. Osborne ; and Sir Henry Leeke, being a party to this contract, and being one of the Board signing the contract, his election and return are void.

Sir *F. Slade*, for the sitting members.—If there had been any undue influence on the part of Government, there is the 17 & 18 Vict. c. 102, to which recourse might have been had ; but I am not counsel for the Admiralty or the Treasury, only for the sitting members ; and as to them, the other side might easily have called Churchward or Mr. Murray, had they thought proper, but they have not done so. If Captain Carnegie had gone down to Dover, the case might, perhaps, have borne a different aspect ; but Churchward was no agent of the sitting members, and is not shewn to have been impli-

cated with them in any way. The charge of Chief Justice Monaghan, in *Kilmartin v. Walsh*, tried at Dublin in 1858, shows that, if a person chooses out of his own money to give a bribe to a voter, that will not affect the sitting member, unless some complicity be shewn ; and here none whatever is shewn between Churchward and either of the sitting members. Churchward was no agent of theirs in any way ; and, therefore, nothing that was done by him can affect them.

The Committee then came to the following March 8. resolutions for report to the House :—

1. “That Admiral Sir Henry John Leeke and William Nicol, Esq., are duly elected barons to serve in this present Parliament for the town and port of Dover.” Final resolutions.

2. “That Charles Thomson Stokes Barton, Joseph Menpes, Daniel Allen, William Stephen Whitnall, William Southey, and Richard Pléde were bribed by the payment of 30s. each ; but that it was not proved that such bribery was committed with the knowledge or consent of the sitting members, or their agents.”

3. “That the allegation contained in the said petition concerning the interference of the ministers, and other servants of the Crown, was not proved to the satisfaction of the Committee.”

CASE XXI.

CLARE COUNTY.

1860. The Committee was appointed on the 6th of March, 1860, and consisted of the following Members :—

Right Hon. Lord Stanley, Lynn,
(*Chairman.*)

Charles Buxton, Esq., Maidstone. Sir Philip de Malpas Grey Egerton, Bart., Cheshire South.		George Sclater-Booth, Esq., Hants North. John Walter, Esq., Berkshire.
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Petitioners :—Electors, against the return of Colonel White.

Sitting Members :—Colonel Luke White and
Colonel Crofton Moore Vandeleur.

Counsel for Petitioners :—Mr. Wordsworth, Q.C., and
Mr. Mundell.

Agents :—Mr. Baker and Mr. Coffey.

Counsel for Col. White :—Sir F. Slade, Q.C., Mr. Phinn, Q.C., and Mr. Welsby.

Agents :—Messrs. Holmes and Co.



March 8. THE Committee agreed to the first eight of the Preliminary resolutions. usual preliminary resolutions (a).

Petition. The petition (of Nicholas Butler and John Barrymore Macnamara), after stating that they

(a) *Ante*, p. 11.

were registered electors, &c., that at the last election for the county of Clare, Colonel Vandeleur, Colonel White, and Mr. Francis Macnamara Calcutt were candidates, and that the two former were returned, alleged bribery, treating, undue influence, and intimidation against Colonel White and his agents. It alleged the improper reception and rejection of votes on various grounds, that the majority for Colonel White was colourable, and that the majority of legal votes were given for Mr. Calcutt. Finally, it prayed the House to declare Colonel White's election to be null and void, and to amend the return by substituting Mr. Calcutt's name.

Bribery,
treating,
undue in-
fluence,
and inti-
midation.

Mr. *Wordsworth* opened a case of bribery and treating, abandoning the charge of undue influence and intimidation, and the claim of the seat on behalf of Mr. Calcutt.

During the examination of a witness, Michael Grady, whilst he was giving evidence of the distribution of £125 among twenty-five people, by one Cangle, and upon its appearing that none of the twenty-five were voters,

March 9.
Evidence
of pay-
ment of
money to
non-voters
is inad-
missible,
unless it
can be
proved
that voters
were
bribed
thereby.

Mr. *Phinn* objected, under the circumstances, to the course of the examination, as irrelevant.

Mr. *Wordsworth* was heard in reply.

The Committee decided, that counsel could not go into the question of distributing money amongst non-voters, unless it could be proved

that some particular voter was bribed by that means.

What sufficient evidence of bribery.

The cases of bribery were distinctly proved, and also the agency of Mr. Michael Macnamara, the gentleman referred to in the 5th resolution of the Committee. He was, it appeared, the conducting agent of Colonel White in the Ennis district, as Mr. C. B. Maloney was in the district of Tulla. Much evidence of reckless expenditure on the part of Colonel White's agents was also given, *e.g.*, the payment by them of £1000 to Mr. C. B. Maloney, also an agent, which he subsequently distributed amongst various persons in sums of £60, £100, and £150, on their simply representing that they "wanted it for the election," and of which no account had been subsequently rendered by such persons; £100 of it was paid to a Rev. Mr. Gleeson, who subsequently distributed it in small sums to a party of voters assembled at a public-house, kept by a Mr. White, in the manner referred to in the 11th resolution of the Committee. It was further proved that no accounts had been furnished to Mr. William Kenney, the agent for election expenses of Colonel White; but that accounts to the amount of £2500 had been sent in to the election auditor on Colonel White's behalf, by a Mr. Joynt, who, although proved to be lodging in London at a house in Craven Street, Strand, evaded service of the summons issued

by the Chairman of the Committee for his attendance, and was in consequence not examined.

On the question of treating, it appeared that Mr. C. B. Maloney ordered Mr. S. Shanks to have some mutton and hams prepared the night before the election, and also got in some meat and wine himself. Eventually refreshments to the amount of £93, some of the items of which consisted of 19 fitches of bacon, 15 gallons of spirits, 43 gallons of ale, 31 gallons of porter, 11 dozen of porter, 9 dozen of ale, &c., were consumed on the two polling-days in Mr. Shanks's house by voters and others. Mr. Shanks stated that he spoke to Mr. Maloney about it on the second day of the poll, and said there was a great consumption of drink going on; to which Mr. M. answered, "that it made no matter, it was all right." Mr. M. subsequently, it appeared, asked Mr. S. for his bill, saying it was the only bill in Tulla he cared about.

What sufficient evidence of treating.

At the conclusion of the case, the Committee came to the following final resolutions for report to the House:—

1. "That Colonel Luke White is not duly elected a knight of the shire to serve in this present Parliament for the county of Clare." Final resolutions.

2. "That the last election for the said county, so far as regards the return of Colonel Luke White, is a void election."

3. "That Colonel Luke White was, by his

agents, guilty of bribery and treating at the last election."

4. "That Michael O'Dea and Patrick Lynch were bribed with the sum of £6 each, by Francis Coffey and Michael Houlihan, to vote for Colonel Luke White."

5. "That Michael Lynch was bribed with £6 by Michael Macnamara."

6. "That Malachi Foley was induced to vote for Colonel White by a promise of £6 made to him by Francis Coffey."

7. "That Connor Howard was bribed with £10 by Thomas Mineter."

8. "That Arthur O'Donnell and John O'Donnell were induced to vote for Colonel White by a promise of money made to them by another Michael Macnamara, a solicitor."

9. "That John Gorman, Peter Sexton, James Sexton, and Patrick D'Arcy were bribed with £3 each by John Cangley."

10. "That treating of voters was largely carried on in the house of Stephen Shanks, with the knowledge and consent of Charteris Brew Maloney."

11. "That numerous voters received sums, varying from £1 upwards, for travelling expenses, without due inquiry as to the amount actually expended by the said voters."

12. "That it was not proved that such bribery and treating were committed with the knowledge and consent of the said Colonel Luke White."

Mr. *Wordsworth* applied for costs under the 11 & 12 Vict. c. 98, s. 90, on the ground that the opposition to the petition was frivolous and vexatious. Costs refused.

The Committee, without hearing counsel in answer, refused the application.

Sir *F. Slade* then stated that he would adduce recriminatory evidence against Mr. Calcutt, as the seat had been claimed. Recriminatory evidence admissible when seat is claimed, although the claim is withdrawn.

Mr. *Wordsworth*.—We have abandoned our claim to the seat.

Sir *F. Slade*.—That makes no difference. It is the universal rule, whenever a claim of the seat is made, that the person against whom the petition is presented is entitled to go into recriminatory evidence to disqualify the claimant on a subsequent election.

Mr. *Wordsworth* withdrew his objection.

The evidence of Mr. Calcutt, previously given in the case, was then read over, and Mr. C. B. Maloney was called and examined; at the termination of which,

The Committee came to the following resolution :—

“That it is not proved to the satisfaction of the Committee that Mr. Francis Macnamara Calcutt is disqualified as a candidate for the representation of the county of Clare” (*a*).

(*a*) See 2nd *Clare* case, *post*.

CASE XXII.

1860.

NORWICH.

The Committee was appointed on the 7th day of March, 1860, and consisted of the following Members:—

Right Hon. Sir William Somerville, Canterbury,
(*Chairman.*)

Alfred Rhodes Bristowe, Esq., Greenwich.	Napier Sturt, Esq., Dor- chester.
George William Hope, Esq., Windsor.	Admiral Sir Michael Sey- mour, Devonport.

- Petitioners*:—1. Electors, against the return of Lord Bury, and praying for the return of Colonel Boldero.
2. Electors, against the return of Lord Bury, and praying for the return of Colonel Boldero.
3. Electors, against the return of Lord Bury, and praying for the return of Sir Samuel Bignold.

Sitting Member petitioned against:—Lord Bury.

Counsel for the 2nd and 3rd Petitions:—Sir F. Slade, Q.C., and Mr. Clerk.

Agents:—Messrs. Baxter, Rose, Norton, and Spofforth.

Counsel for Sitting Member, Lord Bury:—Mr. Phinn, Q.C., and Mr. D. Keane.

Agent:—Mr. F. Gale.

[No person appeared in support of the First Petition.]

The Committee agreed to the usual preliminary resolutions.

The first petition, after stating that at the previous election for Norwich, held in April, 1859, Lord Bury, H. W. Schneider, Esq., Sir S. Bignold, and C. M. Lushington, Esq., were candidates, and that Lord Bury and Mr. Schneider were returned, alleged that Lord Bury and Sir S. Bignold were, by themselves and their agents, guilty of bribery, treating, and undue influence, whereby they were disqualified and rendered incapable of being elected for the city of Norwich during the present Parliament. It then recited that a petition had been presented against the return of Lord Bury at the above-mentioned election, and that in June, 1859, Lord Bury, whilst such petition was still pending, had accepted an office of profit under the Crown, whereupon a new writ was issued, and at such election Lord Bury, Sir S. Bignold, and Colonel Boldero were candidates; that the following notice of the disqualification of Lord Bury had been signed by Arthur Preston and Josiah Buttivant, and had been extensively placarded and circulated, and made known to the electors generally:—

“To Henry Staniforth Patteson, Esq., the returning officer for the city of Norwich and county of the same city, and to the electors of the same city entitled to vote at the election of members to serve in Parliament.

1st petition.

Disqualification of Lord Bury and Sir S. Bignold.

Notice of disqualification to electors.

“ We, the undersigned electors of the city of Norwich and county of the same city, do hereby give you notice that William Coutts Keppel, commonly called Viscount Bury, was at the last election for the said city, holden in the month of April last, guilty by himself and his agents of bribery, treating, and undue influence. That on the 17th day of June, instant, a petition, signed by John Wright, George William Minns, and other electors of the said city, was duly presented to the House of Commons against the return of Viscount Bury, and also against that of Henry William Schneider, Esq., alleging that the said Viscount Bury and the said Henry William Schneider had been guilty, by themselves and their agents, of bribery, treating, and undue influence at the said election for the said city, and such petition is now pending in the House of Commons, and will be duly prosecuted by the said petitioners. And we do hereby give you notice that the said Viscount Bury is, by reason of the said bribery, treating, and undue influence so committed by him and his agents at the said election in April last, now ineligible and incapable of being elected or returned on the present vacancy to represent the said city in Parliament. We do therefore protest against the nomination of the said Viscount Bury as a candidate at the present election, and against his being elected and returned to represent the said city. And we do give you further notice that all votes given at this election in favour of

the said Viscount Bury, will on account of his said ineligibility and incapacity, be entirely lost and thrown away. Dated this 28th day of June, 1859."

That the following notice of Sir Samuel Bignold's disqualification had been made known to the electors generally :—

"Take notice that we, whose names are hereunto subscribed, William Coutts Keppel, commonly called Viscount Bury, a candidate at the present election to represent the city and county of the city of Norwich in Parliament, and Osborn Springfield and William Wilde, registered electors and voters in and for the said city and county of the city of Norwich, do give you and each of you, the said registered electors and voters for the said city and county, notice, that Sir Samuel Bignold, knight, a candidate to represent the said city and county at the present election, is ineligible, disqualified, and incapable of being elected or of sitting in the present Parliament for the said city and county of the city of Norwich, inasmuch as he the said Sir Samuel Bignold, knight, was a candidate to represent the said city and county at a certain election holden on the 30th day of April in the present year, for the election of two citizens to serve in the present Parliament for the said city and county of the city of Norwich, and was as such candidate by himself and his agents guilty of bribery, treating, and undue influence within the true intent and meaning of 'The

Corrupt Practices Act, 1854,' and of divers corrupt practices at the said election, and thereby became, and was, and is utterly ineligible, disqualified, and incapable of being elected on the present vacancy to serve in Parliament for the said city and county, or of sitting in the present Parliament for the said city and county, and that all votes given or recorded by you, or any of you, for the said Sir Samuel Bignold, as such candidate on the present vacancy, will be utterly thrown away: Dated, Norwich, this 28th day of June, 1859." Signed, &c.

That Lord Bury was returned at such election, the number of votes being, for Lord Bury, 1922; for Sir Samuel Bignold, 1561; and for Colonel Boldero, 39. The petition concluded by praying the House to declare that Lord Bury and Sir Samuel Bignold were each of them disqualified to sit for the city of Norwich, in June, 1859; that the election of Lord Bury was null and void; and that the return might be amended by substituting the name of Colonel Boldero for that of Lord Bury.

2nd petition.

The second petition recited the petition presented against the return of Lord Bury and Mr. Schneider at the previous election, held in April, 1859, and alleged that at such election Lord Bury and Sir S. Bignold were, by themselves and their agents, guilty of bribery, &c., whereby they were disqualified; that public notices (as in the first petition) of such disqua-

lification were given, and copies of the notices delivered at the house of every voter, and handed to every voter as he came to poll; that the largest number of valid votes at the election in June were given for Colonel Boldero; and concluded by praying the seat for Colonel Boldero.

The third petition recited, as before, that Lord ^{3rd peti-} Bury was, by himself and his agents, guilty of ^{tion.} bribery at the previous election in April, 1859; that he was thereby disqualified at the election held in June, 1859; that notice of such disqualification was duly given (as in the second petition); that by reason of such disqualification, a larger number of valid votes were given for Sir S. Bignold than for Lord Bury; that Lord Bury was, by himself and his agents, guilty of bribery, treating, and undue influence at the election held in June, 1859; and concluded by praying the seat for Sir Samuel Bignold.

The petitions were read in their order from March 9. the Journals of the House.

Upon the second being read,—

It was objected by Sir *F. Slade*, that the third petition ought to be taken before the second, because it was reported upon before the second by the examiner of election recognisances.

Petitions will be heard according to their order in the Journals.

Mr. *Phinn*.—The order observed by the examiner does not affect the proceedings before this Committee. The Journals of the House are

the rule, *Drogheda*, W. & D. 207; *Warwick*, P. & K. 536.

The Committee resolved—"That the petitions be read in the order in which they appear in the Journals of the House."

The second petition was then withdrawn.

If a member be guilty, by himself or his agents, of bribery at an election, against which a petition is presented, which is ultimately decided against him, he is incapable of being elected again for the same place, although before the petition be decided he accepts an office from the Crown, and is re-elected upon a fresh writ.

Sir *F. Slade* opened the case, and contended that Lord Bury was disqualified as a candidate by reason of the resolutions of the Committee appointed to try the petition against his return for Norwich in April, 1859 (*a*). In the *Southampton* case, 2 P. R. & D. 47, Sir A. Cockburn having accepted the office of Attorney-General, a new writ was issued for the borough of Southampton, whilst a petition was pending against his return for Southampton at the previous election in July, 1852. When the writ was moved for, the Speaker stated (123 Hansard, 1742), that in the case of an election petition, complaining of an undue return, but not claiming the seat for another person, it was competent to the House to issue a new writ pending the petition; but in the case of a petition claiming the seat, it was not competent. When the first petition in that case came on for hearing before the Committee, the Attorney-General (Sir A. Cockburn) appeared before the Committee under protest, but the Committee decided that they must proceed in the usual way, the

(*a*) *Ante*, p. 58.

petition having been referred to them by the House; and they declared the sitting member, Sir A. Cockburn, to have been duly elected. A petition was also presented against the second return of Sir A. Cockburn, on the ground that he was disqualified by reason of bribery upon the occasion of the previous election. In this case the Committee appointed to try the petition against Lord Bury's return at the former election, in April, 1859, declared he had not been duly elected, and that, by his agents, he was guilty of bribery at such election; he was therefore clearly disqualified at the second election; and, if so, the votes given to him were thrown away, just as if they had been given to a minor; *Tavistock*, 2 P. R. & D. 5. If the votes be of no avail, and the opposing candidate has given proper notice of his opponent's disqualification, then he would be entitled to the seat, because he has the majority of legal votes; and on that ground the seat is prayed for Sir S. Bignold.

The writ and return for the two elections of April and June, 1859, were then put in.

Mr. *Phinn* objected that the Committee had no jurisdiction to try this petition, so far as it affected Lord Bury; but the Committee overruled the objection.

The petition against the return of Mr. Schneider and Lord Bury in April, 1859, was then put in, together with the Journals and the report of the Committee to the House,

of 1st August, 1859. The publication of the notice as to Lord Bury's disqualification, as alleged in the petition, and the notice itself, were then proved.

Mr. Clerk.—Two points arise upon this petition: first, was Lord Bury disqualified? and, secondly, was ample notice of his disqualification given? As to the first point, the Committee upon the previous election reported that Lord Bury was not duly elected, and that by his agents he was guilty of bribery at such election. Now the 17 & 18 Vict. c. 102, s. 36, says that any candidate at an election for a county or city, who shall be declared by an election Committee guilty of bribery, treating, or undue influence, by himself or his agents, shall be incapable of sitting for such county or city during the Parliament then in existence. By the common law of Parliament this was the rule, *Stockbridge*, 10 Journ. 286. In the *Horsham* case, 1 P. R. & D. 256, the Committee decided that a candidate who was guilty of treating, by himself and his agents, at a former election, was disqualified at a subsequent election for the same place; and, it having been proved that notice of such disqualification had been given, the Committee struck off the votes given for such member, although at the time of the second election such disqualification had not been found. This is analogous to the effect of an attainder at Common Law, which takes place on a conviction or

judgment; but the forfeiture of the lands dates back to the time of the commission of the offence.—*Steph. Comm.*, vol. iv. p. 451.

If Lord Bury was disqualified, and due notice of such disqualification were proved to have been given, then all votes given for him were thrown away, *2nd Clitheroe*, 2 P. R. & D. 285; *Cork*, K. & O. 391; *Belfast*, F. and F. 601; and Sir Samuel Bignold, who had the next largest number of votes, ought to have the seat which he prays for.

Mr. *Phinn*.—The question is, whether Lord Bury was disqualified at the time of the last election for Norwich, or whether his disqualification has arisen since? The finding of the Committee in July is, that he was guilty of bribery *by his agents*, but not by himself; and this at common law was no disqualification. Up to the passing of the Grenville Act, the Committees deciding upon all questions of controverted elections were Committees of elections and privileges; and there could be no disqualification until judgment was given. Before the 7 & 8 Will. III. c. 4 (the Treating Act), there was no statutable disqualification for treating. The cases of *Longe*, A.D. 1571; *Bletchingly*, Glanv. 39; and *Stockbridge* (*supra*), do not go beyond saying that bribery, when committed by the candidate himself, renders his election void at common law; therefore the offence of bribery, for which a member could be unseated, must have been committed by himself, and not

by his agents. All the statutes upon the subject of corrupt practices at elections were repealed by 17 & 18 Vict. c. 102, which enacts (s. 36) that a candidate declared by an election Committee to be guilty of bribery, by himself or his agents, is incapable of being elected (for such county, city, or borough,) during the then existing Parliament. But Lord Bury had not, at the time of the election and return petitioned against, been declared to be incapable of being elected, or of sitting in this Parliament. Therefore he was not then proved to have been incapable by himself or his agents.

Then as to the effect of an attainder, the forfeiture goes back only to the time of the conviction, unless there has been any fraud, *Whitaker v. Wisby*, 21 L. J. C. P. 116; but whatever may be the law of forfeiture upon conviction, it can have no bearing upon the law and practice of Parliament as to bribery at elections by an agent, because forfeiture of lands followed upon the committal of an offence, which is a guilty act, whereas there can be no guilt chargeable against a sitting member who is utterly ignorant of any act of bribery committed by his agents. Here Lord Bury could not be found guilty of the offence of bribery in a court of law. In truth, 17 & 18 Vict. c. 102, s. 36, introduces a new constructive law of agency which was unknown before; according to that section, if an Election Committee find a candidate guilty of bribery, by himself or his

agents, such candidate is to be incapable of being elected for the same place during the existing Parliament; but at the time of the election now petitioned against, Lord Bury was capable of being elected,—the report of the Committee was subsequent to his election. The statute 11 & 12 Vict. c. 98, s. 86, defines the duties of an Election Committee, and enacts that the Committee is to say whether the sitting member is duly elected; but it is not within the powers of a Committee to decide whether the sitting member is incapable of sitting in Parliament or not,—that is a question for the House alone to deal with. The *Southampton* case (*supra*) was decided before the Corrupt Practices Act, which repealed the old statutes; but now the Committee is governed by that Act. The Committee may report that the sitting member is duly elected, but yet that he is incapable of sitting in Parliament, and then it would be for the House to act in the matter.

The Committee came to the following final March 12. resolutions for report to the House:—

1. “That the Hon. William Coutts Keppel, Final resolutions. commonly called Viscount Bury, is not duly elected a citizen to serve in this present Parliament for the city and county of the city of Norwich.”

2. “That the last election for the said city and county of the city of Norwich is a void election.”

CASE XXIII.

1860.

CITY OF PETERBOROUGH.

The Committee was appointed on the 7th March, 1860,
and consisted of the following Members :—

John George, Esq., Wexford County,
(*Chairman.*)

Stephen Cave, Esq., Shore-	Colonel Hon. James Lindsay,
ham.	Wigan.
Mountstuart Elphinstone	Francis William Russell,
Grant-Duff, Esq., Elgin	Esq., Limerick City.
District.	

Petitioners :—Electors.

Sitting Member petitioned against :—George Hammond
Whalley, Esq.

Counsel for Petitioners :—Mr. Phinn, Q.C., Mr. Serjeant
Pigott, and Mr. W. H. Cooke.

Agents :—Mr. T. Baker, Messrs. Deacon and Taylor.

Counsel for Mr. Whalley :—Mr. Forsyth, Q.C., and
Mr. Tindal Atkinson.

Agent :—Mr. D. Cooper.



March 9. THE Committee agreed to the first twelve of
Prelimi- the usual preliminary resolutions (a).
nary reso-
lutions.

(a) *Ante*, p. 121.

The petition, after stating that at the last Petition. election for the city of Peterborough, Thomson Hankey, Esq., George Hammond Whalley, Esq., John Harry Lee Wingfield, Esq., and James Plaisted Wilde, Esq., were candidates, and that the two former were returned, alleged bribery, treating, and undue influence against Mr. Whalley and his agents, and prayed the House to declare his election and return to be null and void.

Mr. Serjeant *Pigott* opened the case.

The evidence with regard to the agency of John Millar was to the effect, that he had accompanied Mr. Whalley, with five or six others, on the first day of Mr. Whalley's canvass; that he had been an active supporter of Mr. Whalley at previous elections; and that he had been seen in and about the committee-room on one or two occasions. But it appeared from the evidence given on behalf of Mr. Whalley, that the committee-room was thrown open to the general public during the evening, for the purpose of speechifying, &c., and that 100 or 200 people were in the habit of attending there; that Mr. Millar, who was a clothier in Peterborough, was expressly excluded from the committee-room during the day, when the business of the committee was proceeding; that he was never recognised in any way by Mr. Whalley or his party as acting on their behalf, but, on the contrary, that he had acted as the agent

Bribery,
treating,
and undue
influence.

What not
sufficient
evidence of
agency.

for Mr. Wingfield, the Conservative candidate, on several occasions during the election, with reference to a proposed coalition between the Conservatives and Mr. Whalley's supporters. This coalition, it appeared, had been repudiated by Mr. Whalley and his committee, in consequence of which some ill-feeling had arisen between the two parties, who, although opposed to each other in politics—Mr. Whalley being a Liberal—both represented the independent interest, as opposed to the influence exercised in the borough by the Fitzwilliam family.

The evidence with regard to the agency of Mr. Johnson Reed was to some extent similar to the above; but he, it appeared, had never accompanied Mr. Whalley on his canvass, or been seen in or about Mr. Whalley's committee-room.

What not
sufficient
evidence of
bribery.

Most of the cases of bribery adduced on behalf of the petitioners failed, or were contradicted by the evidence given on behalf of Mr. Whalley. It appeared, however, that a Mr. William Vergitt, an active supporter of Mr. Whalley's, who had seconded him at the nomination, and was chairman of his committee, wrote the following letter to a Mrs. Turner, with whom one R. Kelly, a voter, who was residing at Manchester at the time of the election, had left his address :—

"Peterborough, April 27th, '59.

"Mrs. Turner, Mr. Peach's yard.

"If you will be so good as let Mr. Richard Kelly know that this election will take place on Saturday, and that as he has promised to vote for Mr. Whalley, I hereby promise on behalf of the committee of Mr. W. to pay his expenses if he will fulfil such arrangement.

"Yours obediently,

"William Vergitt."

Mr. Vergitt was called as a witness on behalf of Mr. Whalley, and upon cross-examination admitted that he would not have paid Kelly his expenses if he had plumped for Mr. Wingfield, and that his letter meant, "If you come and vote for Mr. Whalley, you shall have your expenses." On re-examination, he stated that he only intended to promise Kelly his legal expenses, viz., such expenses as the law allowed him to pay.

At the conclusion of the case, the Committee came to the following final resolutions for report to the House:—

1. "That George Hammond Whalley, Esq., March 13.
is duly elected a citizen to serve in this present Final reso-
Parliament for the city of Peterborough." lutions.

2. "That it was proved to the Committee that Richard Kelly had been bribed with the payment of £1 by Johnson Reed, and with the further payment of £10 by John Millar. John

Norman with the payment of £4 by John Millar. Charles Firth with the payment of £8 10s. by Johnson Reed. That £5 were given by John Millar to Ann Stimson, the wife of James Stimson, a voter, with the corrupt intention of influencing his vote."

3. "That it appeared to the Committee that Johnson Reed and John Millar were not the agents of George Hammond Whalley, the sitting member."

Costs refused.

Mr. *Forsyth* applied for costs under the 11 & 12 Vict. c. 98, but,

The Committee refused the application.

CASE XXIV.

BOROUGH OF BERWICK-ON-TWEED. 1860.

The Committee was appointed on the 14th March, 1860,
and consisted of the following Members :—

Right Hon. Frederick Peel, Bury,
(*Chairman.*)

Lord Robert Cecil, Stam-	Richard Penruddocke Long,
ford.	Esq., Chippenham.
Grosvenor Hodgkinson,	Sir John Ogilvy, Bart.,
Esq., Newark.	Dundee.

Petitioner :—Richard Hodgson, the defeated candidate.

Sitting Member petitioned against :—Dudley Coutts
Marjoribanks, Esq.

Counsel for Petitioner :—Sir Frederick Slade, Q.C.,
and Mr. Clerk.

Agents :—Messrs. Lyons, Barnes, and Ellis, and
Mr. R. B. Weatherhead.

Counsel for the Sitting Member :—Mr. Phinn, Q.C.,
Mr. Wordsworth, Q.C., and Mr. Melville.

Agents :—Mr. Baker, Messrs. Shum and Crossman,
and Mr. R. Douglas.

THE Committee agreed to the thirteen usual Prelimi-
preliminary resolutions (a). nary reso-
lutions.

(a) *Ante*, pp. 11 and 121.

Petition.

The petition, after stating that at the last election for Berwick, in August, 1859, Mr. Marjoribanks and the petitioner were candidates, and that the numbers were, for Marjoribanks 305, and for the petitioner 304, complained of the improper return of Mr. Marjoribanks, on the ground that many of the electors voting for Mr. Marjoribanks had been disqualified by reason of non-residence, or on the ground of some statutable incapacity, or in consequence of having received parochial relief, or from having no legal qualification to be on the register, or through having given or taken bribes, or been guilty of offences within the meaning of the Corrupt Practice Act. The petition then alleged bribery and treating by the sitting member and his agents; payment of expenses other than through the election auditor; that the sitting member was at the last election disqualified, because he had by himself and his agents been guilty of bribery at the preceding election for Berwick, in April, 1859. It concluded by praying a scrutiny, and the seat for the petitioner.

Bribery
and
treating.

Sitting
member
disquali-
fied by
bribery at
preceding
election.

Scrutiny.

March 16. Sir *F. Slade*, for the petitioner, abandoned the charges of bribery, and stated that the petitioner's case would be confined to the scrutiny.

Mr. *Clerk* stated that he proposed to proceed in the first instance with the scrutiny of non-resident voters.

GEORGE HOOD'S CASE.

Objected to on the ground of non-residence.

It was proved that this voter had for some years occupied a house within the borough, at the yearly rent of £10; that he entered at Martinmas, and that on the 22nd of June, 1859, he went to Leith to commence the business of a grocer there, which he had carried on ever since. On first going to Leith, the voter and his wife took lodgings, where they remained about six weeks, leaving their furniture and household goods in the house at Tweedmouth; six months notice to quit this house was given by the voter at Whitsuntide, which would expire at Martinmas; and in September the rent was paid by him up to that time. On or about the 22nd of July the voter removed all his furniture, with the exception of a barrel and a press, and gave the key of the house to a sister-in-law, who had charge of it until Martinmas. He had never lived in the house since he left it in June, his niece having the charge of the furniture, whilst the voter and his wife lived in lodgings at Leith; and the press, which was the only thing left worth taking away when the furniture was removed, was taken away during the following August.

Mr. *Clerk* summed up the evidence against the vote:—By the 6 & 7 Vict. c. 18, s. 79, the register is to be conclusive evidence that the persons named therein continue to have the

What
sufficient
evidence of
non-resi-
dence.

qualification annexed to their names; but, by the 2nd proviso, no person is to be entitled to vote at any future election, unless he shall, ever since the 31st of July in the year in which his name was inserted in the register, have resided, and at the time of voting shall continue to reside within the borough or place for which he claims to vote. In the *Bath* case, W. & D. 145, the vote of W. H. Walmsley was held bad where it was proved that he had left his house on the 5th of December, and given up possession to the house agent, although he had removed his furniture to a warehouse within the city, and had, after giving up the house, been at Bath for his own private affairs and not for the purpose of voting. In this case the voter had given up possession of his house long before the election, and had actually taken a house and gone into business elsewhere, to which place the whole of his furniture had been removed. He therefore was no longer residing at Berwick up to the time of the election; and therefore his vote must be struck off. In *Whithorn v. Thomas*, 7 M. & G. 1, the Court held, that a person sleeping occasionally within a borough where he carried on his business, did not reside within the borough so as to be qualified to vote.

Mr. *Wordsworth, contra.*—The voter was the tenant of the house until Martinmas, 1859, and until that time he had a free right of coming there whenever he pleased. The words “residing within the borough” are referred to in *Rogers*

on *Elections*, 85 (9th ed.), where it is suggested, that absence, coupled with the power to return, and an intention to return, whenever it may suit the person's convenience, is a constructive legal residence. In the case of *Whithorn v. Thomas*, the voter never did actually reside at Tewkesbury under any circumstances; and, therefore, that case does not bear upon the question now before the Committee.

Vote bad.

JOHN BIRRELL'S CASE.

Objected to on the ground of non-residence.

The voter occupied a house in Berwick up to November, 1858, when he went to Newcastle, where he had obtained work in his trade of a currier; he left his wife behind him at the house in Berwick, but she followed him to Newcastle in May, 1859. During all this time the voter had been working at Newcastle, living in lodgings the greater part of the time; but a few weeks before his wife joined him, he had taken a house in Newcastle, to which the furniture was brought from Berwick, when his wife and family came to Newcastle. After they had left Berwick the house was to be let, and it actually was taken by a person, who, however, never occupied it, and in October, 1859, the voter returned again to the same house in Berwick; but he stated that, had he continued to get suitable work at Newcastle, he had no

What
sufficient
evidence of
non-resi-
dence.

intention of returning to Berwick, and that he only did return because he was not satisfied with his employment at Newcastle, and because, in October, 1859, he had the offer of work at Berwick before he left Newcastle. It appeared that the voter had never been at Berwick, after his wife left in May, 1859, except for the purpose of voting at the election, when he went to a friend's house, and not to his own, in which there was then no furniture whatever.

Vote bad.

In scrutiny, when sufficient number of votes given for sitting member are struck off poll to give petitioner a majority, sitting member's case will be proceeded with, and *vice versa*. Mr. *Phinn*, on behalf of the sitting member, stated that the petitioner being now in a majority of one, he should proceed with the cases of voters objected to in classes 5 and 1, on the ground of non-residence and bribery.

Two votes given for the petitioner having then been struck off by the Committee, on the ground of non-residence,

Mr. *Clerk*, on behalf of the petitioner, stated that he would proceed with the cases of non-residence.

SAMUEL FISH'S CASE.

What sufficient evidence of non-residence. The voter had for some years carried on the business of a boot and shoe maker at Berwick. In September, 1858, he went to Jedburgh, and opened another shop there, his wife and family continuing to live in the house and shop occupied by him at Berwick, until May, 1859, when

they came to live at Jedburgh, and had continued to reside there ever since. After his family left Berwick, in May, 1859, an alteration was made in the premises occupied by the voter, by dividing off the shop from the dwelling-house, the voter continuing to occupy the shop, keeping his name over the door, and carrying on his business there, but the *house* was let to a new tenant. After the above alteration was made, there was no communication whatever between the house and the shop, which was always fastened on the outside by the voter's assistant on shutting up for the night, and quitting the premises. The voter himself, when his health permitted, used to go to Berwick on Saturdays to look after the business, returning generally the same day to Jedburgh, but occasionally remaining until Sunday morning.

Mr. *Clerk* summed up against the vote. March 17. *Whithorn v. Thomas*, 7 M. & G. 1, shows that occupation alone will not confer a vote: there must be continual residence up to the time of the election. So also 6 Vict. c. 18, s. 79, enacts that a voter must have resided within the borough up to the time of polling, to entitle him to vote; whereas here the voter resided at Jedburgh, and only came to Berwick occasionally in the way of his business.

Mr. *Phinn*, in support of the vote.—The voter is upon the register for 1858, his qualification being a house at Berwick; and no evidence has been produced to show that he did not often

sleep in Berwick after his family had gone to Jedburgh. It is not necessary that he should sleep in the same house where his business was carried on; if he slept within the borough of Berwick that would be sufficient. *Whithorn v. Thomas* is no authority in this case, because there the revising barrister had found, as a fact, that Thomas, the voter, did not reside at Tewkesbury.

Vote bad.

THOMAS BOWHILL'S CASE.

What not
sufficient
evidence
of non-
residence.

Objected to on the ground of non-residence.

The voter was a freeman of the borough. In the month of May, 1859, whilst living with his father in Berwick, he accepted an employment as clerk to a Mr. William Lowrey, a land agent living at Barmoor, within seven miles of Berwick, at the salary of £65 a year, but nothing was said about any notice to quit being given; and in August, 1859, with his master's permission, he left to better himself, and took a situation as clerk in an office at Mile End, near London. Whilst in Mr. Lowrey's service the voter took lodgings at Barmoor, beyond the limits of the borough; but he kept the room at his father's house, where he used to sleep before he went to Mr. Lowrey's, and always went there on Saturday, remaining until Monday. Ultimately he left Mr. Lowrey's service four days before the election, and returned to his father's house,

whence he went to his new situation at Mile End, on the 22nd of August.

Mr. *Clerk*, against the vote.—The voter claims to vote as a freeman, under s. 32 of the 2 & 3 Will. IV. c. 45, and not as a householder, under s. 27; he would not, therefore, be entitled to vote unless he had resided for six months previous to the 31st of July, 1859, within the borough of Berwick, or within seven miles from the polling-place. Now here the voter took lodgings beyond that distance, and therefore, although he may have come to his father's house every Saturday and remained till Monday, yet he would be resident at the place where he took lodgings, with a view to being near the place of his employment; and if his residence were there, by s. 79 of 6 Vict. c. 18, his vote ought not to be allowed, because he did not reside within the borough up to the time of voting.

Mr. *Phinn*, in support of the vote.—By s. 76 of the 6 Vict. c. 18, the seven miles mentioned in 2 & 3 Will. IV. c. 45, s. 32, are to be “measured in a straight line on the horizontal plane, from the point within the borough sharing in the election therewith, from which such distance is to be measured according to the directions” contained in the said 32nd section. Taking these two sections together, the distance is to be measured as the crow flies, and not by the road; and even if it were by the road it appears that the place where the voter carried on his business was within the seven miles by a foot-

path. But, further, the voter kept up his residence at his father's house without any intention of relinquishing it, although he may have had a lodging beyond the seven miles, for his own convenience, on the days when he could not return to his father's.

Vote good.

EDWARD DIXON'S CASE.

What
sufficient
evidence
of non-
residence.

Objected to on the ground of non-residence.

The voter, up to June, 1859, carried on the business of a grocer in Berwick, but during that month, falling into difficulties in consequence of the failure of the Northumberland and Durham Bank, he sold off his stock and went to Edinburgh, where he carried on the business of a grocer in Northumberland Street, for a Mr. Laurie, at weekly wages. The house he had occupied in Berwick was given up at Martinmas, 1859, but all the furniture had been removed by the voter's sister into another house in Berwick, which she had hired, in July of the same year. The voter stated that this furniture belonged to him and his sister jointly; that he went to his sister's house at the time of the election; and that he always looked upon Berwick as his home, considering his residence at Edinburgh as a temporary matter during his difficulties.

Mr. *Clerk* summed up the evidence against the vote.

Mr. *Phinn*, in support of the vote, cited the 2nd *Lancaster* case, 2 P. R. and D. 168 ; *Cooke's* case, W. and D. 149 ; and *Crisp's* case, W. and D. 153.

Vote struck off.

ADAM ROBISON'S CASE.

Objected to on the ground of non-residence. What not sufficient evidence of non-residence.

The voter was a plumber in Berwick, and occupied a house and shop in Western Lane, Berwick, up to May, 1859, when he gave it up and took lodgings for himself and family whilst he got the best employment he could as a journeyman ; but, business being slack, he applied for and obtained a situation as porter at the Pensher station of the North Eastern Railway, about eighty miles from Berwick, where he went on the 8th of August. There he hired lodgings at a fortnight's notice, such being the terms of his engagement with the Company. On the 14th of November, 1859, he removed his wife and children from the lodging he had taken in Berwick during the months of May, and brought them to Pensher, where they had since lived. The voter stated that he could always have gone to the lodgings in Berwick when he pleased, and that if the situation at Pensher had not suited him, or if he had not suited the Company, he should have done so.

Vote good.

JOSEPH HENRY DARLING'S CASE.

Objected to on the ground of non-residence.

What not
an express
decision of
the revis-
ing bar-
rister.

The name of this voter appeared No. 460 upon the register, which had been made out in the regular way by the town clerk of Berwick. It appeared that a claim to be placed upon the register was made out on his behalf by Mr. Sanderson, one of the Conservative agents for the borough, and that when the names of claimants were called over in their order before the revising barrister, no evidence being given in support of the claim, the revising barrister, according to his usual practice, was about to strike his pen through the voter's name, when Mr. Sanderson interposed, and gave some evidence as to the voter's qualification, with which the opposite agent expressed himself satisfied.

The original claim itself was produced before the Committee, when it appeared that the voter's name was in fact struck through, but that the initials of the revising barrister were also against the name; and it was proved that this, according to his practice, was an admission of the claim; whereupon the town clerk inserted the name upon the register.

March 19. Mr. *Clerk*, for the petitioner, objected that before the Committee could inquire into the objection to this vote, they must be satisfied that there had been an express decision of the revising barrister, 2nd *Lancaster*, 1 P. R. and D.

169; *Bath*, W. and D. 152; and 1st *Harwich*, 1 P. R. and D. 303, *Cobbold's* case. He then called a witness, a solicitor of Berwick, who attended the court of the revising barrister on behalf of the Conservative party with Mr. Sanderson, who stated that there was no argument whatever before the revising barrister as to the voter's qualification, nor any evidence whatever given against his right to be placed upon the register.

The voter himself was also called, when,

Mr. *Wordsworth* proposed, on cross-examination, to ask him of whom he hired the warehouse which appeared upon the claim to be the nature of his qualification.

Mr. *Clerk* objected, that the examination must be confined to the question, whether or no the revising barrister had given an express decision, inasmuch as by the 6 Vict. c. 18, s. 98, the register was conclusive as to the qualification of a voter whose name appeared upon the register.

Mr. *Wordsworth* was heard against the objection.

The Committee allowed the objection.

After hearing the arguments of counsel on the main question, the Committee decided,

"That there was not an express decision of the revising barrister for the insertion in the register of the name of Joseph Henry Darling."

Where an objection is taken before the Committee, that there has been no express decision by the revising barrister on the claim, and evidence is called to support the objection, the cross-examination must be confined to the question whether there has been an express decision or not.

WILLIAM GRAY'S CASE (a).

Objected to on the ground that he had received parochial relief.

A certificate of chargeability, signed by the Chairman of the Board of Guardians under 11 & 12 Vict. c. 110, s. 11, is admissible as evidence of the receipt of parochial relief.

Mr. *Wordsworth* proposed to put in evidence a certificate, under 7 & 8 Vict. c. 101, s. 69, and 11 & 12 Vict. c. 110, s. 11, signed by the Chairman of the Board of Guardians for the Poor Law Union of Berwick, showing that Rachael Gray, the voter's wife, had become chargeable to the parish on the 24th December, 1857, citing *Taylor on Evidence*, p. 1297 (3rd ed.), s. 1441.

Mr. *Clerk*.—This evidence is not admissible. The persons giving the relief ought to be called to prove the fact. The 11th section of 11 & 12 Vict. c. 110, makes such a certificate sufficient evidence of chargeability for the purpose of making an order of removal within twenty-one days from the date of it; but it cannot be used here so as to render it unnecessary to produce the persons who actually gave the relief relied on.

The Committee decided that the document was admissible in evidence.

A voter whose wife has been placed in a lunatic

The identity of the voter, and Rachael, his wife, having been proved, and the certificate put in,

Mr. *Clerk*, in support of the vote.—By the

(a) It was admitted that in this case there had been an express decision by the revising barrister.

7 & 8 Vict. c. 101, s. 27, the overseers of a parish are enabled to recover the costs of the maintenance of a lunatic, where such lunatic has an estate sufficient for the purpose; and, therefore, it becomes a mere debt from the person liable to pay, and is not in any sense a receipt of parochial relief; and, therefore, if it be proved that the voter has been called upon to pay, and actually has paid, all that the parish charged him in respect of his wife's confinement in the lunatic asylum, there would be no ground for saying that the voter had been in the receipt of parish relief.

an asylum at the expense of the parish, is disqualified from voting, as having received parochial relief, although he subsequently repay the money.

The voter himself, and the assistant-overseer, were then called; when it appeared that the voter's wife was removed to a lunatic asylum in December, 1857, and remained there until June, 1858, when she returned home, and had since lived with her husband. On the 7th January, 1858, he had signed an agreement with the overseers to pay them £12 a year towards his wife's maintenance whilst in the asylum, and he had actually paid to them the sum of £3 15s. on her account, with which the overseers were satisfied, they having agreed, by the recommendation of the Poor Law Guardians, to reduce the payment agreed to be made by the voter, from £12 a year to £8. It was also proved that at the asylum £30 was the usual amount charged to the parish on account of pauper patients, but it was not proved what was the charge made on account of Rachael Gray.

Mr. *Wordsworth*, against the vote.—This objection is taken under s. 36 of the 2 & 3 Will. IV. c. 45, whereby the receipt, within a year of 31st July, of parochial relief, which, by the then law of Parliament, disqualified a voter from voting, disentitles the voter to be upon the register. Whether such parochial relief has been repaid afterwards is immaterial; if the parish pay the money the relief is granted.

March 20. The Committee decided “that William Gray had not a right to vote” (a).

VAUGHAN CURRY’S CASE.

Objected to on the ground of having received parochial relief.

Payment by the relieving-officer to a medical man for a certificate of voter’s lunacy, not a receipt of parochial relief.

It was proved that at the Revising Barrister’s Court, held in October, 1859, this voter was objected to on the ground of chargeability. The voter not appearing, his name was struck out, upon the evidence of the relieving-officer of Berwick that he had received parochial relief. The relieving-officer being called, stated that he had made a payment of 2s. 6d. to the medical officer of the parish for a certificate as to the lunacy of the voter, and which he, the relieving-officer, had obtained at the instance of the voter’s sister, with whom the voter resided. It

(a) The Committee divided. *Ayes*, 4: Lord R. Cecil, Mr. Hodgkinson, Sir J. Ogilvy, Mr. Peel; *Noes*, 1: Mr. Long.

appeared that upon this certificate the voter was taken to the workhouse, whence, after a detention of about an hour, he made his escape, and was not brought back. No attempt had been made to recover the 2s. 6d. from the voter, and no other relief had ever been received by him from the parish.

Mr. *Wordsworth*, against the vote.—This sum of 2s. 6d. was incurred for medical attendance, which is a receipt of parochial relief. *Rogers on Elections* (9th ed.), 169; *Bedford* case, C. & R. 79; *Hodge's* case, C. & R. 77.

Sir *F. Slade*, in support of the vote.—This payment was not in the nature of a charge for medical attendance—it was a step that, by law, the assistant-overseer was bound to take before he could have the voter removed to an asylum.

Vote retained.

JAMES MACE'S CASE.

Objected to on the ground of having received parochial relief.

The voter's daughter, Isabella Mace, who was about twenty-two years of age, had been in service with a family travelling abroad; and, after she returned home, she was, at the request of the voter, conveyed to a lunatic asylum, on the 27th November, 1858, and had been maintained there ever since at the expense of the parish of Berwick.

A child of voter of the age of 22, taken to a lunatic asylum at voter's request, and maintained there at the expense of parish, not a receipt

Mr. *Phinn*, against the vote.—The voter's

of paro-
chial relief.

daughter being at home, and a part of his family, he was bound to support her, and to repay the parish the expense of her maintenance in the asylum, if he was able to do so ; and if not, then he is in the receipt of parochial relief, and, therefore, disqualified to vote.

Sir *F. Slade*, in support of the vote.—There is no law which compels a father to maintain a child after the age of sixteen, even when the child is unemancipated ; but here the daughter was emancipated, by living away from her father in service, and not returning until after the age of twenty-one. The 4 & 5 Will. IV. c. 76, s. 56, enacts that relief given to a child under sixteen is relief given to the parent ; but here the daughter was above sixteen at the time of her conveyance to the asylum. In the 2nd *Lancaster* case, 2 P. R. & D. 166 (*Harrison's* case), the Committee held the vote to be good, where relief was given to an unemancipated child of the voter's of the age of seventeen.

Mr. *Phinn*, in reply.—In *Harrison's* case, the effect of 4 & 5 Will. IV. c. 76, s. 56, was not correctly understood. That section declares that relief given to a child under the age of sixteen, is to be considered as relief given to the parent ; but it does not affect the question of relief given to a child above that age ; and, by the law of Parliament, a voter is disqualified if relief be given to a member of his family, whom he is bound, if able, to support. By the statute of Elizabeth, this voter is still bound to support

his child ; and, therefore, the relief being given, and on his application, the vote is bad.

Vote good.

WILLIAM TODD AND ROBERT LYALL'S CASES.

Objected to on the ground of employment in the Customs or Excise.

It was proved that both these voters, after making a declaration to discharge their duties properly, had been employed occasionally as glut-tide waiters since 1855, when required by the tide-surveyor at Berwick, and were paid for their services by the Collector of the Customs of the port, out of Crown monies, allowed by the Board of Customs for that purpose.

Where statutable incapacity existed at time of revision, and no objection then made, the Committee will not inquire into vote.

Mr. *Clerk* objected, that the Committee had no jurisdiction to inquire into these votes, because the alleged statutable incapacity had not arisen since the register was made out ; and, as the same state of circumstances were proved to have existed since 1855, the voters ought to have been objected to at the revision before the revising barrister ; and, inasmuch as there had been no such objection, there had been no decision upon the matter by the revising barrister ; and, therefore, by 6 Vict. c. 18, s. 98, the Committee could not go into the question.

Mr. *Phinn, contra*.—The employment of the voters was occasional merely ; and, therefore, at the time of the registration, they may have been

qualified as voters to be put upon the register, and afterwards became disqualified, just as in the case of parochial relief, from which a cause of disqualification may arise after the making out of the lists. In the *Rochester* case, K. & O. 107, the Committee decided against the vote of a person who had been employed in the Customs within twelve months of the election, although there was no express decision by the revising barrister. In *Clerk on Elections*, 418, 419, it is suggested that, in the case of voters incapacitated by statute, the Committee are at liberty to inquire into the disqualification, although no objection to the voter was taken before the revising barrister.

Mr. *Clerk*.—That is but an opinion of mine, unsupported by any authority. Here it is the appointment, and not the employment, which disqualifies; and if Todd does now hold the appointment, he held it in 1855, and no objection to his vote was made when the lists were revised.

The Committee resolved—"That in the absence of any decision by the revising barrister, they could not inquire into these votes" (a).

March 21.
Where
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In the course of this day's proceedings,
Sir *F. Slade*, on behalf of the petitioner, applied for costs, under 11 & 12 Vict. c. 98, s. 92, with reference to certain votes objected to, in

(a) See *Pownall v. Hood*, 11 C. B. 1.

classes 5 and 7, on behalf of the sitting member, which objections had subsequently been abandoned. cation must be made immediately after the abandonment.

Mr. *Wordsworth*.—The application comes too late. It ought to have been made, pursuant to the 2nd preliminary resolution, at the close of the inquiry in each particular case.

The Committee refused the application, on the ground that it ought to have been made when the cases were abandoned.

JOSEPH FLEMING STROTHER'S CASE.

Objected to on the ground of non-residence. March 23.

It appeared that the voter lived and carried on business as a saddler at Norham, in a shop which was distant seven miles and 539 feet from the Town Hall in Berwick; that he was living there in May, 1857, and continued to reside there up to the time of the election. Where voter resides at the same place, before and at the time of the revision, such place being without the limits of the borough, but no objection is made at the Revision Court on that ground, the Committee will not inquire into vote.

Mr. *Phinn*.—This case cannot be inquired into by the Committee. They have, by 6 Vict. c. 18, s. 98, jurisdiction to inquire into the right of any voter to vote, when there has been an express decision of the revising barrister upon his case. By s. 79, the register is final and conclusive as to the persons whose names appear upon it having the requisite qualification, and the right to vote for cities and boroughs continues, unless the voter has not resided within the distance required by law since the 31st of July, in the year in which his name was placed upon

the register. This provision is to meet the case of a *change of residence* after the lists have been made out; but here there has been no change of residence at all, and, therefore, the objection now taken ought to have been taken before the revising barrister; and, that not having been done, the Committee will not inquire into the matter, because there was no express decision by him upon the point.

Sir *F. Slade*.—The Act which says that the register is to be conclusive evidence of the persons named therein continuing to have the requisite qualification, does not apply to residence, but to property qualification only. This is evident from the fact that the proviso in s. 79 requires expressly a continuous residence within the borough until the date of the election—a condition which the voter has not fulfilled.

Mr. *Phinn*, in reply, was stopped.

The Committee decided, that they would not inquire into the case of this voter, as there had been no express decision by the revising barrister.

DAVID ALEXANDER LAMB'S CASE.

March 24. Objected to on the ground of having bribed.

Vote of Mr. *Phinn*.—This voter is objected to for bribing; but, if proved, that would not justify the Committee in striking off his vote. Bribery at common law was a complete contract executed

(a) See 26 Vict. c. 29, s. 8.

between two parties; but that definition was enlarged by 2 Geo. II. c. 24, which made the offence of the briber complete, on the making of the corrupt contract. That Act was followed by the 49 Geo. III. c. 118, which was levelled at the practice of buying the influence of the patron of a borough; but the whole question is now governed by the 17 & 18 Vict. c. 102, in which the definition of bribery is narrowed; for the word "ask," which was in 2 Geo. II. c. 24, s. 7, is not found in 17 & 18 Vict. c. 102, and the definition of a briber is so far contracted by the omission of that word. By the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, s. 54, it is bribery to ask for a reward, and disqualifies the voter.

Section 2 of the 17 & 18 Vict. c. 102 defines who are to be deemed guilty of bribery; and by sect. 6, persons found guilty of bribery are to be struck off the list of voters by the revising barrister: but the question here is, whether, if it be proved that the voter gave or offered a bribe, his vote ought to be struck off. Before the 17 & 18 Vict. c. 102, in the *Ipswich* case, K. & O. 388, no doubt a voter was struck off for having bribed; but in the *Youghall* case, F. & F. 410, the Committee resolved that they would not proceed with the cases of voters who had offered bribes. In *Rogers on Elections* (9th ed.), p. 549, it is said that before the 17 & 18 Vict. c. 102, it was doubtful whether the vote of a briber was invalid, because his vote

need not be invalidated by the giving of a bribe, as that of the bribee is supposed to be by its receipt. It may be that the briber votes at eight in the morning, and then bribes in the afternoon. How can it be said that his vote at eight in the morning is bad? In *Clerk on Election Committees*, the *Worcester* case, K. & O. 255, and the *Youghall* and *Kingston* cases are cited, and reasons are assigned by the author why the briber should not be struck off the list of voters unless he voted corruptly.

Sir *F. Slade*.—The Corrupt Practices Act gives a new definition of bribery; and, by s. 2, enacts that any offer or promise of money to a voter is bribery; and, therefore, the persons committing such an act commit bribery, and the legal penalties consequent upon being proved to be guilty of bribery must fall upon the briber.

The Committee, without hearing further argument, decided that they ought to go into the cases of voters alleged to have bribed.

After several witnesses had been examined, Mr. *Phinn* abandoned the defence of the vote.

March 29. During this day's proceedings, Sir *F. Slade*, on behalf of the petitioner, abandoned the further prosecution of the petition.

The Committee then came to the following resolutions for report to the House:—

Final resolutions.

1. "That Dudley Coutts Marjoribanks, Esq., is duly elected a burgess to serve in this present Parliament for the town of Berwick-upon-Tweed."

2. "That George Keen was bribed by the payment of £2 to his daughter for voting for Richard Hodgson, Esq. That Alexander Melrose was bribed by the promise of a situation on the North British Railway for his son, to vote for Richard Hodgson, Esq. That Robert Blaylock was bribed by the payment of £6 to vote for Richard Hodgson, Esq., of which £3 was paid by William M'Gall. That Johnson How Pattison was bribed by the payment of money by William M'Gall to vote for Richard Hodgson, Esq. That David Alexander Lamb offered £5 to Adam Robison to induce him to vote for Dudley Coutts Marjoribanks, Esq. That Robert Brown gave £3 to Michael Anderson to induce him to vote for Dudley Coutts Marjoribanks, Esq."

3. "That it was not proved that the bribery in the above cases was committed with the knowledge or consent of Dudley Coutts Marjoribanks, Esq., or Richard Hodgson, Esq."

4. "That the Committee are of opinion that William M'Gall, in his evidence before them, was guilty of wilful and corrupt perjury."

5. "That the Committee has reason to believe that bribery extensively prevailed at the last election for the town of Berwick-upon-Tweed" (a).

(a) A Commission under 15 & 16 Vict. c. 57, was appointed in consequence of this report.

6. "That the Committee had altered the poll taken at the last election, by striking off the names of George Hood, No. 770 on the register; John Birrell, No. 402 on the register; Thomas Rutherford, No. 271 on the register; William Taylor, No. 681 on the register; Samuel Fish, No. 503 on the register; Edward Dixon, Nos. 93 and 472 on the register; James Unthank, No. 338 on the register; John Allan Bowhill, No. 29 on the register; John Alexander, No. 734 on the register; George Keen, No. 172 on the register; Alexander Melrose, No. 601 on the register; David Alexander Lamb, Nos. 182 and 563 on the register; Robert Brown, No. 420 on the register; Robert Blaylock, No. 405 on the register; and Johnson How Pattison, No. 233 on the register, as not having had a right to vote at such election; and had also altered the poll, by striking off the name of William Gray, No. 146 on the register, as not having had a right to vote at such election, nor to be placed on the register of voters for the said town."

CASE XXV.

BOROUGH OF BEVERLEY (Second). 1860.

The Committee was appointed on the 14th of March, 1860,
and consisted of the following Members:—

Thomas William Evans, Esq., South Derbyshire,
(*Chairman.*)

Charles Du Cane, Esq., North Essex.	Joseph Alfred Hardcastle, Esq., Bury St. Edmunds.
Hon. E. F. Leveson Gower, Bodmin.	Sir Edward Samuel Hayes, Bart., Donegal Co.

Petitioners :—Electors.

Sitting Member petitioned against :—James Robert
Walker, Esq.

Counsel for the Petitioners :—Mr. Serjeant Pigott, and
Mr. Tindal Atkinson.

Agents :—Messrs. Durnford and Co., Mr. William Clark,
Mr. Luke Hind.

Counsel for Mr. Walker :—Sir Frederick Slade, Q.C.,
Mr. Forsyth, Q.C., and Mr. Bushby.

Agents :—Messrs. Baxter, Rose, and Norton.

THE Committee agreed to the first twelve of the March 16.
usual preliminary resolutions (a). Prelimi-
nary reso-
lutions.

The petition, after alleging that Mr. Walker Petition.
was improperly elected in consequence of the

Bribery, bribery, treating, and undue influence of him-
 treating, self and his agents, prayed the House to declare
 and undue influence. his election to be null and void.

Mr. Serjeant *Pigott* abandoned the charges of treating and undue influence, and opened a case of bribery by payments to out-voters, under the pretence of paying their travelling expenses to Beverley, and also for their loss of time.

Bribery by payment of travelling expenses. It was proved that a circular letter had been sent to different out-voters by Mr. Baynton, the election agent for Mr. Walker, which letter was in the following terms :—

“Sir,—I beg to inform you that the election of a member of Parliament to serve for this borough in Parliament, will take place on Tuesday next. James R. Walker, Esq., the candidate at the last election, is the Conservative candidate, and on his behalf I take the liberty of soliciting your vote and interest. In the course of a day or two a gentleman will call upon you with directions to arrange for your conveyance to this place and back again. (Signed) H. BAYNTON.”

Upon the receipt of such a letter, Thomas Whitfield, an elector, then living at Lincoln, had come to Beverley, and had been paid £6 by Nathaniel Kempley, at the Cross Keys Inn in Beverley, before he voted, and a further sum of £2 by Benjamin Moore, after Moore had seen him vote for Mr. Walker. The actual expenses of the voter were about 30s.

Another voter, Edward Milner, residing at York, came to Beverley on the receipt of a similar letter, and, on the polling-day, told Jacolina Wilkin and Nathaniel Kempley that he would vote for the sitting member if his expenses were paid; upon which they paid him £3, and he then gave his vote for Mr. Walker. The actual travelling expenses of this voter were about 12s.

Other voters were proved to have been bribed by sums of £2 and £3 each, paid to them by John Smiles Vickers and John Dales.

To establish the agency of the persons by whom these payments were made, it was proved that they had been actively engaged in canvassing the electors, both separately and in company with the sitting member; that they had gone about with canvassing books; that they accompanied him on the hustings on the day of the nomination; and that at a meeting held the day before the election, and convened by placards, announcing that the Conservative candidates, Major Edwards and Mr. Walker, would address the electors, they were all present upon the platform, with other friends of the Conservative candidate, who had been canvassing with them.

Facts insufficient to prove agency.

No witnesses were called on behalf of Mr. Walker.

Mr. Serjeant *Pigott* summed up the case on March 17. behalf of the petitioners.

Sir *F. Slade* addressed the Committee on behalf of Mr. Walker.

The Committee then came to the following resolutions for report to the House :—

Final resolutions.

1. “That James Robert Walker, Esq., is duly elected a burgess to serve in the present Parliament for the borough of Beverley.”

2. “That it was proved to the Committee that Thomas Whitfield was bribed with £6 by Nathaniel Kempley, and with £2 by Benjamin Moore.”

3. “That Edward Milner was bribed with £5 by Nathaniel Kempley and Jacolina Wilkin.”

4. “That John Needham was bribed with £2 for himself, and £2 for his son, by John Smiles Vickers.”

5. “That John Raspin, Francis Clerk, Robert Richardson, and David Leadley, were bribed with £3 each by John Dales.”

6. “That it was not proved that such bribery was committed with the knowledge and consent of James Robert Walker, Esq., or his agents.”

CASE XXVI.

CLARE COUNTY (SECOND). 1860.

The Committee was appointed on the 5th day of June, 1860,
and consisted of the following Members:—

John Mellor, Esq., Nottingham,
(*Chairman.*)

James Wallington Percy	Earl of Gifford, Tot-
Wallington, Esq., South	ness.
Essex.	John Thomas Norris,
Viscount Emlyn, Pembroke-	Esq., Abingdon.
shire.	

Petitioner:—Charles White, the defeated Candidate.

Sitting Member petitioned against:—Francis Macnamara
Calcutt, Esq.

Counsel for the Petitioner:—Sir Frederick Slade, Q.C.,
Mr. Phinn, Q.C., and Mr. Welsby.

Agents:—Messrs. Holmes and Co.

Counsel for Sitting Member:—Mr. J. Clerk and
Mr. J. B. Karslake.

Agents:—Mr. Baker.

THE Committee agreed to the twelve usual pre- June 7.
liminary resolutions (a).

The petition stated that at the election for *Petition.*
the county of Clare, held in May, 1859, Colonel

Vandeleur, Colonel White, and Mr. Calcutt were candidates, and that the two former were returned. That a petition of electors was presented against the return of Colonel White, which was heard by a select committee, who declared his election and return to be void. That on the 21st of March, 1860, a new writ was issued for a new election for the said county, which election took place on the 7th of April, 1860.

Corruptly
giving
fees, &c.,
to sheriff.

“That before, during, or after the said election in May, 1859, the said Francis Macnamara Calcutt, Esq., by himself, his friends, or agents, or by a person or persons employed in his behalf, unlawfully, secretly, and corruptly gave certain fees and rewards, and made certain payments of money by way of compliment and gratuity to the sheriff and under-sheriff of the said county of Clare, or to either of them, by reason of the giving of which fees and rewards, and also by reason of the making of which payments of money by way of compliment and gratuity as aforesaid, the said Francis Macnamara Calcutt, Esq., became and was wholly disabled, incapacitated, disqualified, and ineligible to become a candidate, or to be elected and returned, or to sit or serve in this present Parliament for the said county of Clare, upon such election holden in April, 1860, or upon the vacancy occasioned by the setting aside of the said former election and return of the said Colonel Luke White, by virtue of the statute in such case made and provided.”

“That before, during, or after the said election in May, 1859, the said Francis Macnamara Calcutt, Esq., by himself, his friends or agents, or by some person or persons employed by him or them, directly or indirectly gave certain sums of money, fees, and retaining fees, to certain agents, inspectors, and clerks, for doing something of and concerning matters relating to such election in May, 1859, over and above the sum and sums set forth to be paid in the Schedule to the Act in that case made and provided to agents, inspectors, and clerks; by reason of the giving of which sum or sums of money, fees, and retaining fees, as last aforesaid, the said Francis Macnamara Calcutt, Esq., became and was wholly disabled, incapacitated, disqualified, and ineligible to become a candidate, or to be elected and returned, or to sit or serve in this present Parliament for the said county upon such election in April, 1860, or upon the vacancy occasioned by the setting aside of the said former election and return of the said Colonel Luke White, by virtue of the statute in such case made and provided.”

Disqualification by bribery, &c., and by giving larger fees to agents, inspectors, &c., than allowed by statute, at previous election.

That at the new election on the 7th of April, the said F. M. Calcutt, notwithstanding his disability as aforesaid, became again a candidate.

That before the nomination a notice of such disqualification, under the hands of two duly qualified electors, was publicly given to the said F. M. Calcutt, and to the returning officer of the county, in the presence of the electors. That

Due notice of disqualification given.

the said F. M. Calcutt was put in nomination and was returned. That the disability of the said F. M. Calcutt was notorious to the electors. That in addition to the public notice so given as aforesaid, printed notices of such disability were also given to the persons appointed to preside at the different polling-booths, and were printed and distributed to the voters. The petition then set out a copy of the notice of disability. Finally, it prayed the House to declare Mr. Calcutt's election and return to be null and void, and that the return should be amended by substituting the name of the petitioner in the place of the said F. M. Calcutt.

Where a Committee which sat upon a previous election has decided (upon re-criminatory evidence) that A. is not disqualified to represent a place, and A. stands for such place at a subsequent elec-

Sir *F. Slade* was about to open the case on behalf of the petitioner, when,

Mr. *Clerk* objected, that the only material allegation in the petition was the disqualification of Mr. Calcutt, on the ground that he had made illegal payments to the under-sheriff and agents at the election in 1859, and that this matter had been inquired into on a former occasion (*a*).

Sir *F. Slade*.—The Committee which inquired into the previous election, after hearing re-criminatory evidence against Mr. Calcutt, resolved that it was not proved, *to their satisfaction*, that Mr. Calcutt was disqualified as a candidate for the representation of the county of Clare. This shows that they had not sufficient evidence

(*a*) See 1st *Clare* case, (*ante*, p. 143).

before them to report that Mr. Calcutt was disqualified; and, as the resolution was not reported to the House, pursuant to s. 87 of the 11 & 12 Vict. c. 98, it is merely an *obiter dictum*, and not a judgment that Mr. Calcutt was duly qualified. At all events, the illegal payment to the under-sheriff, alleged in this petition, was not known when the former one was tried, and is new matter, which this Committee may go into. The present petition is by a stranger to the former proceeding; and it complains of Mr. Calcutt's election upon the vacancy caused by the unseating of Colonel White, upon the ground that at the election in 1859 he violated the 1 & 2 Geo. IV. c. 58, by giving a gratuity to the under-sheriff, and payments to his agents beyond what that Act authorizes, whereby he was disqualified from again becoming a candidate. It is a rule, that the conduct of a candidate at one election may be questioned upon a second election arising out of the former; and, therefore, if he is shown to have made illegal payments both to the sheriff and to his agents in 1859, then he was disqualified at the last election. Even if upon the former inquiry there had been a judicial decision respecting Mr. Calcutt, which is not the case, it could not affect this petitioner, because an estoppel is only binding between the parties. The decision of the former Committee, by the 11 & 12 Vict. c. 98, s. 86, is to be final between the parties; but Mr. Charles White is a stranger to that pro-

tion, and is returned, the decision of the previous Committee is not to be taken as conclusive of A.'s qualification, and an estoppel to a petition being subsequently prosecuted against him for disqualification at the second election by reason of his acts at the first.

ceeding, and, therefore, is at liberty to prove that Mr. Calcutt was not a qualified candidate, and that he is entitled to the seat.

The Committee determined, that it was necessary to go into the facts of the case before they could decide the objection.

Payments at an Irish election to the Under-sheriff and others in excess of the sums allowed by the 1 & 2 Geo. IV. c. 58, if not made corruptly, do not disqualify the person making them from standing at a subsequent election, or (*semble*) avoid the election at which they are made.

It appeared that at the general election in May, 1859, Colonel Vandeleur, Colonel Luke White, and Mr. Calcutt were candidates for the county of Clare, and that Colonel Vandeleur and Colonel White were returned. A petition, by electors, complaining of the return of Colonel White, and claiming the seat for Mr. Calcutt, was afterwards presented, and heard in March last, when it was resolved that Colonel White had not been duly elected; and, further, that it was not proved to the satisfaction of the Committee that Mr. Calcutt was disqualified as a candidate for the representation of the county of Clare (*a*). It was proved that Mr. Calcutt had, on the occasion of the election in 1859, paid to Mr. Coffey, his principal agent, the exact sum authorized by the 1 & 2 Geo. IV. c. 58; that Colonel White having engaged all the agents in the country, he had been obliged to get solicitors from Dublin to act as his agents, to one of whom he had paid £25, and to four others £20 each. By the 1 & 2 Geo. IV. c. 58, the conducting agent is to receive the sum of

(*a*) *Ante*, p. 143.

£100, and the other agents six guineas for the first day's polling, and three guineas for every other day. It was also proved that the under-sheriff, Mr. Henry Green, had been paid the sum of £120 by Mr. Calcutt, which was in excess of the legal demand. Mr. Green, who was called as a witness for the petitioner, stated that this sum was paid to him absolutely as his fee, and to cover all expenses of booths, polling clerks, &c., and that it was customary to get something in addition to the legal demand at elections; whilst Mr. Calcutt's conducting agent stated that Mr. Green asked him for that sum, and that it was paid to him *on account* of expenses only, he to repay any surplus that might remain in hand after all expenses were paid. It appeared that a meeting had been held at the under-sheriff's to arrange about the expenses; that Colonel White was not represented at that meeting, and that it was the conducting agent of Colonel Vandeleur who proposed that the agents should give the under-sheriff £120 each, which was agreed to.

Mr. Clerk, on behalf of the sitting member (a). —First, this is a matter already decided. The previous Committee resolved that Mr. Calcutt was not proved to be disqualified from becoming a candidate at a subsequent election. Had they

(a) It was agreed that the question of notice should stand over until the decision of the Committee had been taken upon the question of qualification.

decided that Mr. Calcutt was disqualified, we should have had no answer to this petition. It is true that on that occasion the claim of the seat was withdrawn; but the petitioner having claimed the seat, the whole conduct of the claimant was in issue; and although the claim was withdrawn, the other side could not by that be deprived of their right to recriminate. *Rogers on Elections* (9th Ed.), 470, *et seq.*; *Warren on Election Comm.* 485; *Galway case*, P. & K. 118; *Ennis case*, K. & O. 485. And although the minutes of the former Committee show that a part only of the present cause of complaint was before the former Committee, and although it is said that the petitioner did not then know of the alleged illegal payment to the sheriff, yet they might have known it, and therefore they are not entitled to bring it forward now. It is said that this is not an inquiry between the same parties; but suppose the former Committee had resolved that Mr. Calcutt was disqualified, could he have said that the present petitioner could not have taken advantage of it? This is not a question *inter partes*, it is a judgment *in rem*, and is in the nature of a criminal inquiry. It has been argued that the resolution of the former Committee is not binding because it was not reported to the House; but s. 86 of the 11 & 12 Vict. c. 98 relates to the determination of the Select Committee whether A. or B. is duly elected, and shows what is to be final between the parties;

s. 87 only enables the Committee to come to resolutions which they may report to the House or not, such as whether a witness has prevaricated, or that certain persons should be prosecuted for perjury. The question of Mr. Calcutt's disqualification was before the last Committee; they decided upon it, and as there is no Act authorizing another Committee to re-open the question, their decision is final.

But, secondly, was Mr. Calcutt in fact disqualified? Even supposing the payment to the under-sheriff to have been made absolutely, such payment is only illegal by the 1 & 2 Geo. IV. c. 58. There is no suggestion that it was paid corruptly so as to influence the return. Moreover, the Act is impliedly repealed. The 2 & 3 Will. IV. c. 88, s. 48 (Irish Reform Act), makes new arrangements respecting polling-booths and the expense of candidates at elections, which are inconsistent with the 1 & 2 Geo. IV. c. 58. It enables the candidates to contract for the erection of polling-booths, or to pay the under-sheriff for them. Then the 13 & 14 Vict. c. 68, by s. 19 limits the amount to be charged by the returning officer for the polling-booths, but does not make it illegal to pay a larger sum. Can this Act be read with 1 & 2 Geo. IV. c. 58 so as to make such a payment illegal? Then, as to the payments to agents, the 1 & 2 Geo. IV. c. 58, s. 6, and Schedule B, point out what is to be paid to them; but at that time county elections lasted for fifteen days,

and the schedule of fees in that Act is drawn up with reference to that fact. The 13 & 14 Vict. c. 68 reduced the time to two days; and it by no means follows that what was a fair remuneration for fifteen days would be so for two days. Again, an agent in that Act means a person on the spot; and if one candidate secures them all, other candidates must be allowed to pay the expenses of bringing agents from a distance, and if they are professional men, the candidate must pay their charges beyond the fees allowed by the 1 & 2 Geo. IV. c. 58.

It is said that that Act only allows one conducting agent to each candidate; but the final paragraph in Schedule B shows that one conducting agent and a barrister might have been employed at each place of polling; and as the Act does not define a conducting agent, all the agents paid by Mr. Calcutt may be considered as conducting agents, and therefore they have not been paid more than what the Act authorized. But even if the 1 & 2 Geo. IV. c. 58 be not repealed by other Acts, it clearly is by the 17 & 18 Vict. c. 102, which applies to Ireland, and was passed to consolidate the laws relating to elections, and provides for a new class of agents, not limited either in number or remuneration; s. 31 clearly contemplates the appointment of several agents, and also of an agent for election expenses, who is not the same person as the conducting agent. In fact, this Act alters the whole state of the

law, and makes the 1 & 2 Geo. IV. c. 58 entirely inapplicable.

Evidence having been adduced on behalf of the sitting member as to the circumstances under which the money was paid to the under-sheriff,

Mr. *Karslake* summed up.—It is necessary to show that the extra sum paid to the under-sheriff was paid as a gratuity; if it were paid on the understanding that everything beyond the proper charges was to be repaid, there is no offence within the 1 & 2 Geo. IV. c. 58, supposing it to be in force; but it is clearly repealed as to the sheriff; and even supposing it to be in force as to agents, Mr. Calcutt has not infringed it. What was meant by an inspector, as distinguished from a conducting agent, at that time was, that inspectors were to be paid so much a day during the polling; but if the inspector were a professional man he would be entitled to be paid extra for his services, the clause at the end of the schedule clearly showing that the fees allowed were to cover all other petty expenses of a similar character to those referred to. This is a penal Act, and Mr. Calcutt must be brought within it by showing that, if 1 & 2 Geo. IV. c. 58 is in force, those payments were not made *bond fide*.

Mr. *Phinn*, in reply.—If the 1 & 2 Geo. IV. c. 58 is repealed, no doubt this petition is at an end. But the rule is, that an express enactment in an earlier statute is repealed by a later one

only if it cannot co-exist with it ; but, if it can, then the latter qualifies the former, and so much as is not inconsistent with the latter remains. Then, is there anything that repeals this Act by implication, for it is not contended that it is expressly repealed ? The object of the 13 & 14 Vict. c. 68 was to limit the expenses of candidates at elections ; and whereas candidates were then at liberty to contract for the erection of booths with the sheriff, s. 19 limits the expenses of such booths to be paid by the candidates ; but how can that section repeal a former Act, which directs that no compliment or gratuity shall be given to any sheriff or returning officer ? It is said that Mr. Calcutt has been already acquitted of this charge ; and that, although the payment to the sheriff was no part of the former charge, yet, as it might have been gone into, the decision of the former Committee is a bar to this petition. But the *Cheltenham* case, 2 P. R. D. 224, shows that where a matter which might have been inquired into upon a former petition was not proceeded with, there is no bar. Again, how can the proceedings of a former Committee be an estoppel between the parties to this petition ? That Committee decided, upon the evidence before them as to the particular question of extra payments to agents, that Mr. Calcutt was not proved to be disqualified ; but how can that resolution be binding upon a petition between different parties ? If the Committee had decided that

Mr. Calcutt was disqualified, that would have been a judgment against a party to the petition; but they having found him not guilty, it is not conclusive against all the world; because a stranger to the former proceeding is not precluded from going into a question of disqualification, which was not in issue, and could not have been decided upon the former occasion. Then, as to the payments to agents, the statute clearly contemplates only a conducting agent; all other agents were to have six guineas for the first day, and three for every other. It is said that, according to the last clause of Schedule B, all these agents might have been paid as conducting agents; but it is quite clear, looking at the clause and the whole schedule, that one barrister and conducting agent for the whole election is meant, and one check clerk for each polling place; otherwise, the clause is inconsistent with the schedule. Then, is this part of the schedule repealed by the altered state of circumstances? The 17 & 18 Vict. c. 102 introduces new officers, but it does not interfere with existing ones; and it cannot be said that by this creation of new officers all provisions as to existing officers are repealed: no statute has ever been held to be thus repealed by implication.

Supposing the disqualification to have existed, are the proceedings before the former Committee a bar to this branch of the present petition? That Committee resolved, that Mr. Calcutt was

not proved to be disqualified ; and this resolution was not reported to the House. By the 11 & 12 Vict. c. 98, s. 86, every Select Committee is to determine on certain issues referred to them by the House, which determination is to be final between the parties to all intents and purposes ; but by s. 87, if the Committee come to a resolution other than the determination above mentioned, they may in their discretion report it to the House, who may either confirm it or disagree with it ; therefore, on particular questions the determination of the Committee is final, but any resolution other than such determination may be dealt with by the House. If this resolution had been reported to the House, it might have been referred back to the Committee ; and as it was not reported, can it be considered as a binding determination when the House might have affirmed it or not ? By the Grenville Act, the House surrendered some of its powers in reference to election petitions ; but it retained its former rights in other questions not provided for by the Act. Again, the Committee, by not reporting their resolutions to the House, show that they did not consider it a final decision. The payments complained of are clearly within the mischief intended to be remedied by the statute. The cases of 2nd *Peterboro*, 2 P. R. & D. 291 ; *Honiton*, 3 Lud. 162 ; *Clitheroe*, 2 P. R. D. 276, are all distinguishable from this case, which depends entirely upon the words of the statutes referred to.

The Committee came to the following final June 8. resolution for report to the House :—

“ That Francis Macnamara Calcutt is duly ^{Final} elected a knight of the shire to serve in this ^{reso-} lution. present Parliament for the county of Clare.”

Mr. *Clerk* applied for costs, but
The Committee refused the application.

Costs
refused.

CASE XXVII.

1860.

CITY OF LONDONDERRY.

The Committee was appointed on the 5th of June, 1860,
and consisted of the following Members :—

Wm. Robert Seymour Vesey Fitzgerald, Esq., Horsham,
(*Chairman.*)

Right Hon. Charles Bowyer		Hon. George Denman, Tiver-
Adderley, North Stafford-		ton.
shire.		Montagu Edward Smith,
James Clay, Esq., Hull.		Esq., Truro.

Petitioner :—Samuel Macurdy Greer, Esq., a defeated
Candidate.

Sitting Member petitioned against :—William
McCormick, Esq.

Counsel for Petitioner :—Mr. Phinn, Q.C., and
Mr. McCullagh.

Agents :—Messrs. Marchant and Pead.

Counsel for the Sitting Member :—Sir Frederick Slade, Q.C.,
Mr. Serjeant Cross, and Mr. Clerk.

Agents :—Mr. Carnsew and Mr. Crawford.



June 7. THE Committee agreed to the 1st, 2nd, and 8th
of the usual preliminary resolutions (a).

The petition, after stating that at the last Petition. election William McCormick, Esq., George Skipton, Esq., and the petitioner, were candidates, and that the former was returned, alleged that the said William McCormick, previous to and at the time of his declaring himself a candidate, and at and during the whole period of the election, and at the time of the return, had directly and indirectly himself, or by some person in trust for him, or for his use and benefit, or on his account, undertaken, executed, held or enjoyed, in whole or in part, a certain Contract on account of the public service. contract, agreement, or commission made or entered into with, under, or from the Commissioners of Her Majesty's Treasury, or with, under, or from the Postmaster-General, for and on account of the public service in Ireland, and also certain benefit and emolument arising therefrom; and had also knowingly and willingly furnished or provided, in pursuance of such agreement, contract, or commission, money to be remitted abroad, or wares or merchandise to be used or employed in the service of the public; by reason of which contract, agreement, and commission, and also by reason of the said furnishing and providing as aforesaid, the said William McCormick was, during all the time aforesaid, then incapable of being elected at the said election, or of sitting or voting as a member of the House of Commons by virtue of the statute in such case made and provided.

Lease of
railway
from Pub-
lic Works
Loan Com-
mission-
ers.

It further alleged that the said William McCormick, before, at, and during the said election, and at the time of the said return, directly and indirectly himself, and by other and others in trust for him, or for his use, benefit, or account, had undertaken, executed, held, and enjoyed, and continued to execute, hold, and enjoy, in the whole or in part, a contract or commission made and entered into for and on account of the public service in Ireland; to wit, a certain indenture of lease, made on the 10th of April, 1858, between the Public Works Loan Commissioners of the one part, and the said William McCormick of the other part, whereby a certain line of railway, called the Londonderry and Coleraine Railway, and a branch to Limavady, then vested in the said Commissioners, under and by virtue of the statutes in that behalf made and provided, was, subject to the conditions and provisions in the said lease specified, by them demised to the said William McCormick; which lease was, at the time of the said election, a valid and subsisting and continuing contract between the said William McCormick and the said Commissioners; and thereby the said William McCormick was, at the time of the said election and return, incapable of being elected, or sitting in the Commons House of Parliament.

It further alleged that, by virtue of the 41 Geo. III. c. 52, intituled, &c., the said William McCormick, as such contractor, &c., was incapable of being elected, or of sitting or voting as

a member of the united Parliament of Great Britain and Ireland.

It then alleged that due notice of Mr. McCormick's disqualification was given to the electors; that the majority of legal votes was given for the petitioner; and finally prayed the amendment of the return by the substitution of the name of the petitioner for that of Mr. McCormick.

Notice of disqualification to voters.

The facts of the case sufficiently appear from the allegations in the petition above given, and the arguments which follow.

Mr. *Phinn*, for the petitioner.—The Londonderry and Coleraine Railway was incorporated in 1848. Shortly after the formation of the line the Company got into difficulties, and applied to the Exchequer Loan Commissioners, who, in 1852, advanced them money upon a mortgage of the line. Ultimately the Company made default in payment, and the Commissioners entered into possession as mortgagees, and, in 1858, demised the line to Mr. McCormick, who was working the same at the time of the election. Under these circumstances, the money lent being public money, Mr. McCormick was clearly a contractor within the Act. But, further, on the 13th January, 1857, the Postmaster-General made a contract with the Londonderry and Coleraine Railway Company for the conveyance of the mails; under which Mr. McCormick, as lessee, conveyed the mails, and received the

The lessee of a railway from the Public Works Loan Commissioners in Ireland is not disqualified from being elected a member of Parliament as a contractor, either by reason of his being such lessee, or by reason of his conveying mails on his railway under a contract with the Postmaster-General.

money for such conveyance up to the time of the election. Both under the loan from the Exchequer Loan Commissioners, and under the contract with the Postmaster-General, Mr. McCormick was clearly within the statute.

The 1st section of the 22 Geo. III. c. 45 provides that any person who shall, directly or indirectly, undertake, *execute*, hold, or enjoy any contract, &c., on account of the public service, shall be incapable, &c., whilst he shall *execute*, &c., such contract, *or enjoy any benefit or emolument* arising from the same. The 3rd section provides that the Act is not to extend to contracts entered into by any Incorporated Trading Company in its corporate capacity ; and the 10th section provides that in every such contract a condition shall be inserted that no member of the House of Commons shall be admitted to any share of such contract. But it is to be observed that the corresponding section of the Irish Act, 41 Geo. III. c. 52, s. 4, differs from the 3rd section of the English Act above quoted. There is no similar exception as to Trading Companies in the Irish Act. The latter Act (s. 4) only excepts “ persons,” members of Trading Companies, and does not except the contracts made by the Companies, as the English Act does ; moreover, it refers only to members of Companies *then* existing. And the effect of these statutes is this :—that in England every contract with a Trading Company, either then or thereafter existing, is exempted ; whereas in

Ireland the members only of such Companies are exempted, and, further, the members of those Companies only which existed at the time of the passing of the Act.

But is this such a contract as the Act contemplates? Is it "on account of the public service?" Clearly it is. The 57 Geo. III. c. 34 constitutes the Commissioners for Public Works. That Act recites that it would be advantageous to advance money for the employment of the labouring classes in Great Britain and Ireland on "works of a *public* nature." By s. 6, the Lord-Lieutenant is to appoint Commissioners for Ireland. The money is to be advanced by the Treasury, and an account of the sum advanced laid before Parliament (s. 12); and section 25 defines to what purposes the advance is to be limited, viz., "in aid of any *public* work." By the 1 Geo. IV. c. 60, the powers of the Commissioners were extended; and by s. 19 of that Act they are enabled, in default of payment, to take possession of the property on which they had advanced the money, and to sell or mortgage the same. The 3 Geo. IV. c. 86, s. 17, still further extended their powers as to mortgages; and by s. 25 of that Act, all the rights, title, interest, authority, powers, &c., of the Companies by whom the mortgages are executed is vested in the Commissioners. Then, by 1 & 2 Will. IV. c. 24, s. 21, the Commissioners have power to lease property which they have thus acquired. Under

these Acts the Commissioners have—1st, power to advance public money in aid of public works; 2ndly, to take a mortgage of the undertaking; 3rdly, on default of payment of the mortgage money, to enter into possession, with all the rights incident thereto; 4thly, to lease such undertaking.

In *R. v. York*, 2 Q. B. 847, it was held, under a very similar Act (5 & 6 Will. IV. c. 76, s. 28), that a lessee of premises under the corporation of a borough was disqualified for being a councillor of the borough as a contractor with them. And the House of Commons has always been exceedingly jealous in cases of places of profit under the Crown; *Frome*, 2 P. R. & D. 58. The *Dartmouth* (B. & Arn. 460), and *Maidstone* (*Rogers App.*, 9th ed., 305) cases, turned on the question whether the member had been released from his contract; but in the former case it was assumed throughout that, if he had not been released, he would have been disqualified. The *Leominster* case (*Rogers App.*, 9th ed., 302), when closely looked at, will be found to be in favour of the petitioner. On this head I submit—1st, that the lease is a contract; 2ndly, that it is a contract for the public service entered into with Commissioners using public money.

2ndly. With regard to the conveyance of the mails. By the statutes above quoted, all the rights of the Londonderry and Coleraine Railway Company are completely vested in the Commissioners, and those of the Commissioners

in their lessee, Mr. McCormick. The Railway Company contracted to carry the mails on 13th January, 1857. This is a continuous and still subsisting contract. Mr. McCormick was aware of this provision when he took the lease of the Railway ; and, further, it is only on a certificate of the due performance of the contract being deposited at the Post Office that each quarterly payment can be made. Without doubt, Mr. McCormick *executes*, if he does not undertake ; and enjoys, in the very words of the Act, “ the benefit and emolument arising from the same.” A question may arise whether such a contract as this is merely personal, or runs with the land. *Keppel v. Bailey*, 2 My. & K., p. 317 is not decisive on this point. The cases on the subject are reviewed in *Tulk v. Moxhay*, 2 Phill. 774, and are all collected in the notes to *Spencer’s* case in *Smith’s Leading Cases*, 4th ed., p. 42. But here is a contract which can only be performed by a person in possession of certain land ; and Mr. McCormick is clearly bound to execute it. I submit, therefore, that the contract, and all the benefit thereof, passes to Mr. McCormick by the terms of the lease. At all events, he has performed the work, and has received the benefit and emolument for it. The 1 & 2 Vict. c. 98 brings Mr. McCormick into privity with the Postmaster-General. The Postmaster-General may, by the provisions of sects. 1 & 12, call on the Railway Company to carry the mails, leaving the amount of compensation to arbitration (sect. 16),

in fact, he may *compel* the Company to carry the mails; and the word "Company," by s. 19, includes the proprietor of the Railway for the time being. By s. 6 the Company is declared to be entitled to reasonable remuneration for such conveyance. That the conveyance of mails is for the public service cannot be disputed, and the words of the Contractor's Act refer not only to those who have personally contracted, but who have adopted, held, or enjoyed any contract. The words "benefit or emolument" override the whole section. At law, the authorities on the Municipal Acts are in point; *Lefevre v. Lancaster*, 3 E. & B. 530. The cases are collected in *Rawlinson's Corporation Acts* by Welsby, p. 51.

A person alleging himself to be a candidate is entitled to petition, unless his disqualification to be a candidate is obvious and incontestable.

Sir *F. Slade*, for the sitting member, objected in the first instance that Mr. Greer was not entitled to petition, inasmuch as he was a shareholder in the Dublin Steam Packet Company, which had a contract with Government. Being disqualified, therefore, as a candidate, he is not entitled to petition in that character, (a).

Mr. *McCullagh*, *contra*.—In the case quoted by Sir F. Slade, the disqualification of the petitioner was incontestable; but here it is a mere assertion that Mr. Greer is disqualified; the truth of the assertion depends on facts which are not yet proved, and which we contest.

Sir *F. Slade*, in reply, submitted that the words, "signed by a person alleging himself

(a) See Rogers on Elections, (9th ed.) 419.

to be a candidate," in the 72nd section of the 11 & 12 Vict. c. 98, must mean a person legally qualified to be a candidate. They would not, for instance, include a woman or a foreigner simply because they *alleged* themselves to have been candidates. He proposed to call Mr. Greer to prove the facts.

The Committee overruled the objection.

Sir *F. Slade* then proceeded to argue the main questions urged on behalf of the petitioner—If the argument of the petitioner on the first point be correct, all persons who hold houses or crown land as lessees of the Commissioners of Woods and Forests would be disqualified. Such persons have, it is true, made a contract in one sense of the word, but not a contract within either the meaning or the mischief of the Contractor's Act. That Act is a penal one, and must be construed strictly.

[The Committee intimated that Sir F. Slade need not continue his argument on that point.]

Then, on the second point, at common law no member of a corporate body is liable, either criminally or civilly, for the acts of the corporate body; a corporation is a separate entity; if this were not so, every shareholder in every railway company in Ireland would be disqualified. But a corporation cannot be a public contractor within the Act; the Act is directed against persons, and has no meaning as applied to corporations.

But, further, there can be no contract unless there are two bargaining parties. The very essence of a contract is that it is voluntary. In this case the contract, so far as Mr. McCormick is concerned, is compulsory (1 & 2 Vict. c. 98). The conveyance of the mails is a burthen imposed upon him, as lessee of the line, not a benefit. The very form of the contract shows that it is not such a contract as the Act contemplated. It is, in fact, an enlarged bond with a penalty. The case of the Commissioners who have power by statute to take houses for the purpose of making the approaches to Westminster Bridge, is analogous. Could it be said that a person whose house was so taken by the Commissioners, although he was remunerated in accordance with the provisions of the Act, was a contractor within the meaning of the Contractor's Act? Or suppose a man's land taken by a railway company under the compulsory clauses of the Lands Clauses Consolidation Act—Is that a contract? This is the same case.

But another essential of a contract is privity between the two contracting parties. But there is no privity between Mr. McCormick and the Postmaster-General. Could they sue each other on the bond? Clearly not. Nor is there any privity between Mr. McCormick and the Londonderry and Coleraine Railway Company. He comes in under other parties. What remedy, for instance, would Mr. McCormick have, either at law or equity, against the railway company

Clearly none. Nor is Mr. McCormick brought into personal contact with Government, which is what the Act meant to provide against; *Thompson v. Pearce*, Rogers on Elections (9th ed.), 208. Then, does Mr. McCormick execute, directly or indirectly, any contract, &c., made with any person or persons, for or on account of the public service? This must mean such a contract as could be enforced by either party at law or equity. That is not the case here. The case of Mr. Somes, *Dartmouth, B. & Arn.*, 460, Rogers on Elections (9th ed.), p. 208, shows what the word “indirectly” means.

Mr. *Phinn* having been heard in reply,

The Committee came to the following final June 8. resolution for report to the House :—

“That William McCormick, Esq., is duly elected a citizen to serve in this present Parliament for the city of Londonderry.” Final resolution.

CASE XXVIII.

1862. BOROUGH OF GREAT GRIMSBY.

The Committee was appointed on the 2nd of April, 1862,
and consisted of the following Members:—

Edward Christopher Egerton, Esq., Macclesfield,
(*Chairman.*)

Sir Arthur William Buller, Bart., Devonport.		Hon. Henry George Liddell, Northumberland South.
George Grenfell Glyn, Esq., Shaftesbury.		Robert Longfield, Esq., Mal- low.

Petitioners:—Electors.

Sitting Member:—John Chapman, Esq.

Counsel for Petitioners:—Mr. Phinn, Q.C., Mr. Welsby,
and Mr. Vernon Harcourt.

Agents:—Messrs. Bircham, Dalrymple, and Drake, and
Messrs. Grange and Winteringham.

Counsel for the Sitting Member:—Sir F. Slade, Q.C.,
Mr. Forsyth, Q.C., and Mr. W. H. Cooke.

Agents:—Messrs. Baxter, Rose, and Co., and Mr. W. H.
Daubney.



April 4. THE Committee agreed to the first eleven of the
Prelimi- usual preliminary resolutions (a), and also to
nary reso- the following, numbering it as the 11th, and
lutions.

numbering the one as to absent Counsel as the 12th:—

“That the Committee will follow the practice of the Courts of Law with regard to speeches, as laid down in Section 18 of the Common Law Procedure Act, 1854.”

The petition, after stating that at the last Petition. election for the borough of Great Grimsby, John Chapman, Esq., and George Fieschi Heneage, Esq., were candidates, and that the former was returned, alleged bribery, treating, Bribery, treating, and undue and undue influence against Mr. Chapman and his agents, and also an organized system of influence. violence and intimidation by means of tumultuous mobs, armed with hammers, sticks, stones, &c., and hired, encouraged, and led by Mr. Chapman himself. It concluded by praying the House to declare Mr. Chapman's election to be null and void. Tumultuous mobs led by the sitting member.

Mr. *Phinn* opened the case.

The witnesses called in support of the petition, besides being in many cases much shaken on cross-examination, were contradicted on all material points by the evidence called on behalf of the sitting member.

At the conclusion of the case the Committee April 10. came to the following resolution for report to the House:—

“That John Chapman, Esq., is duly elected Final resolution.

a burgess to serve in this present Parliament for the borough of Great Grimsby" (a).

Costs
refused.

Sir *F. Slade*, on behalf of the sitting member, applied for costs, under the 11 & 12 Vict. c. 98, s. 93 ; but,

The Committee refused the application.

(a) The Committee further expressed their regret that charges should have been put into the petition as to Mr. Chapman's leading a mob and creating a riot, inasmuch as it appeared from the evidence that he, on the contrary, quelled the riot.

CASE XXIX.

BOROUGH OF LISBURN.

1863.

The Committee was appointed on the 2nd of June, 1863,
and consisted of the following Members :—

Thomas William Evans, Esq., South Derbyshire,
(*Chairman.*)

Viscount Curzon, Leicester- shire South.	William Edward Forster Esq., Bradford.
Viscount Enfield, Middlesex.	George Selater Booth, Esq., Hants North.

Petitioners :—Electors.

Sitting Member :—John Doherty Barbour, Esq.

Counsel for Petitioners :—Sir F. Slade, Q.C., and Mr. W. H.
Cooke.

Agents :—Messrs. Baxter, Rose, and Norton, and Mr. W. H.
Moore.

Counsel for the Sitting Member :—Mr. Phinn, Q.C., and
Mr. Coleridge, Q.C.

Agents :—Messrs. Wyatt and Co.

THE Committee agreed to the twelve usual pre- June 4.
liminary resolutions (a). Prelimi-
nary reso-
lutions.

Petition. The petition, which bore date the 11th day of March, 1863, after stating, that at the last election, John Doherty Barbour, Esq., and Edward Wingfield Verner, Esq., were candidates, and that the former was returned, alleged bribery, treating, and undue influence against the sitting member and his agents, and prayed the House to declare his election and return to be null and void.

Sir *F. Slade* opened a case of bribery, treating, and undue influence, by payments and offers of money, and by the personal imprisonment and detention, for many days, of voters and others at the sitting member's factory near Epsburn.

The right of the petitioners to petition must be proved in the first instance.

After the production and proof of the writ, return, and poll books,

Mr. *Phinn* objected to the petitioners proceeding with their case until it was proved that the petition had been signed by the parties whose names were affixed, and that such persons were electors, entitled to petition.

Mr. *Cooke, contra*.—It appears from the poll-books, which have been produced from the proper custody, that, at the last election, two persons of the same name as the petitioners voted, without objection, for Mr. Verner. That is sufficient *prima facie* evidence of their right.

Mr. *Phinn*, in reply, was contending that

the Committee ought to require strict proof on this objection, which was advisedly taken, and which had been frequently decided by Election Committees to be a valid one, when,

Mr. *Cooke* said that he would call a witness to identify the persons who voted with those who had signed the petition—which was accordingly done.

Mr. *Phinn* then objected that the petition was not a *bonâ fide* one, within the meaning of the Election Petitions Act, 11 & 12 Vict. c. 98, s. 2. It was in evidence before the General Committee of Elections, to whom the matter had been referred by the House, and of whose report, as it had been printed and presented to the House, the Committee were bound to take judicial notice, that at the same time that the petition had been signed, the petitioners had also signed a notice of withdrawal, which, with the petition, they had intrusted to their solicitor, Mr. Moore. A petition signed under such circumstances was not a *bonâ fide* one within the meaning of the Act, or such a one as the Committee would inquire into. At the very time the petitioners had signed the petition, they had signed a *cotemporaneous* document of withdrawal, and had entrusted that document to a third person, and so had put the carrying on or withdrawal of the petition entirely out of their own power. Such documents might be used, not for inquiry, which was the object of

What a
bonâ fide
signature
of petition
within the
meaning of
the 11 & 12
Vict. c. 98.

every *bonâ fide* petition, but for the purpose of extorting money, or for other fraudulent purposes. If the objection was valid, this was the proper time to take it. Rogers on Elections, 455 (9th ed.)

Sir *F. Slade, contra.*—The whole matter has been inquired into by the General Committee of Elections, who have decided that there was no withdrawal of the petition (*a*). This petition has been duly referred by the House to the Committee under the Act, and they must go on with it, and not allow the inquiry to be stifled on a preliminary point.

Mr. *Phinn*, in reply.—The withdrawal reported on by the General Committee was a second withdrawal, presented to the Speaker, and made on the 24th of March. This, the petitioners asserted, they had been inveigled into making by a Mr. M'Cann, and the General Committee took that view. But the notice of withdrawal we rely on is another document altogether. It was made on the day the petition was signed, and entrusted, not to Mr. M'Cann, but to the petitioners' own solicitor, Mr. Moore, whose acts the petitioners could not disclaim. But I do not contend that even this amounts to a withdrawal. I say it totally destroys the *bonâ fides* of the petition. It is ob-

(*a*) See their Report to the House. Comm. Journ. 8 May, 1863.

vious that into this question the General Committee never entered. It was not before them.

The Committee decided that the petitioners should proceed.

Upon Samuel Thomas Corry being called as a witness,

Mr. *Phinn* objected that evidence of bribery in this case could not be gone into. It was admitted that the witness was not himself a voter, and it was only alleged that he was bribed to personate a voter. This was not bribery within the second section of the 17 & 18 Vict. c. 102. There was a difference between payments made to induce an elector to vote or to refrain from voting, and giving money to a party not entitled to vote. General evidence given by the witness would be admissible, but money paid to him could not be treated as a case of bribery for which the sitting member was responsible. It might be a *casus omissus*, but the statute did not apply to such a case.

Sir *F. Slade, contra*.—This is clearly a case of bribery within the Act. It may not be within the first or second clauses of the second section, which seem to refer to voters only, but it is clearly within the third clause of the section, as a gift of money to the witness in order to induce him to procure, or endeavour to procure—by personating his father—the return of the sitting member; and had the contest been

decided by one vote, and had such vote been obtained by personation, the provisions of the statute would have been fully realised. It was not, moreover, competent for the sitting member to treat this witness as a non-elect^r after corruptly endeavouring to induce him to become, although illegally, a voter.

Mr. *Phinn*, in reply.—The third clause of the second section was passed to meet a wholly different state of things. It was directed against proprietors of pocket boroughs, or parties possessing extensive influence, who undertook, for a large sum, to secure a seat for a candidate, and not against the bribery of non-electors. It was, in fact, merely a re-enactment of the 49 Geo. III. c. 118, which was repealed by the statute now under discussion.

The Committee decided,

“That, inasmuch as money was given to the witness in order to induce him to personate his father (himself not being a voter), the Committee is of opinion that this constitutes such a corrupt intention as to bring the case within the meaning of the third section (a) of the Act 17 & 18 Vict. c. 102, by which bribery is defined and explained.”

Several witnesses were then called and examined on behalf of the petitioners.

(a) Probably a mistake for the 3rd clause of the 2nd section.

At the opening of the proceedings this day, June 5. Mr. *Phinn* stated that, in consequence of the decision arrived at by the Committee on the previous day, the sitting member would not further defend his seat.

The Committee then came to the following final resolutions for report to the House :—

1. "That John Doherty Barbour, Esq., is not duly elected a burgess to serve in this present Parliament for the borough of Lisburn." Final resolutions.

2. "That the last election for the said borough is a void election."

3. "That John Doherty Barbour was, by himself and his agents, guilty of bribery and treating at the last election."

4. "That Samuel Thomas Corry, a non-elect, was bribed by agents of the said John Doherty Barbour, in order to induce him to personate his late father (who died in November last, and who had been an elector), and to vote for the said John Doherty Barbour."

5. "That the said John Doherty Barbour did himself endeavour to corrupt James Bannister, a voter, and that James Bannister was subsequently offered the sums of £50 and £60 by agents of the said John Doherty Barbour, to induce him to vote for the said John Doherty Barbour."

6. "That several of the voters were forcibly detained, and guarded by armed men, in a room belonging to the said John Doherty Barbour and his partners, for several days previous to the election, and during that time were subjected

to undue influence and treating, with the view of inducing them to vote for the said John Doherty Barbour" (a).

Costs
refused.

Sir *F. Slade* applied for costs, on the ground that the opposition to the petition was frivolous and vexatious.

Mr. *Coleridge* was heard in answer.

Sir *F. Slade* was heard in reply.

The Committee decided that the opposition to the petition was not frivolous and vexatious (b).

(a) In consequence of this report, the Attorney-General was directed by the House to prosecute J. D. Barbour, Esq. See now 26 Vict. c. 29, s. 9.

(b) The Committee divided on the question, "That the opposition to the petition was frivolous and vexatious." *Ayes*, 2: Viscount Curzon; Mr. Selater-Booth. *Noes*, 3: Mr. Forster; Mr. Evans; Viscount Enfield.

CASE XXX.

BOROUGH OF BERWICK-ON-TWEED. 1864.

The Committee was appointed on the 9th of March, 1864,
and consisted of the following Members :—

Robert Longfield, Esq., Q.C., Mallow,
(*Chairman.*)

The Hon. E. F. Leveson Gower, Bodmin.	James Banks Stanhope, Esq., North Lincolnshire.
William Pollard Urquhart, Esq., Westmeath.	Charles Turner, Esq., South Lancashire.

Petitioner :—Alexander Mitchell, Esq., the defeated Can-
didate.

Sitting Member :—William Walter Cargill, Esq.

Counsel for Petitioner :—Mr. Phinn, Q.C., Mr. Welsby,
and Mr. Davison.

Agents :—Messrs. Bircham, Dalrymple, Drake, and Ward.

Counsel for Sitting Member :—Mr. Cooke, Q.C., Mr. Stuart,
and Mr. Clerk.

Agents :—Messrs. Wilkinson, Stevens, and Wilkinson,
and Mr. R. B. Weatherhead.

THE Committee agreed to the twelve preliminary March 11.
resolutions mentioned *ante*, p. 11.

Petition. The petition, after stating, that at the last election for Berwick, William Walter Cargill, Esq., and the petitioner, were candidates, and that the former was returned, charged bribery, treating, and other illegal and corrupt practices, against Mr. Cargill and his agents, by reason of which he was disqualified to serve in Parliament, and his return void. It then alleged that the majority for Mr. Cargill was a colourable one only ; that the votes given for him were bad on various grounds, and ought to have been rejected, and that votes tendered for the petitioner ought to have been received. Finally, it prayed a scrutiny and the seat for the petitioner.

Bribery, treating, and undue influence.

Scrutiny.

Committee will not allow scrutiny to be taken first, on the ground that material witnesses for the petitioner have absconded.

Mr. *Welsby* opened the case, and proposed, with the permission of the Committee, to go into the scrutiny in the first instance, on the ground that two witnesses, named William McGall and Selby Lockwell, had absconded (*a*), in consequence of which the petitioner had not been able to serve them with the Speaker's warrant. He cited the 1st *Harwich* case, 1 P. R. & D. 300.

Mr. *Cooke, contra*.—Such a course is unprecedented. Committees have always required each party to complete their general case in the first instance, by which means, if either sitting

(*a*) It was admitted that one of these persons, at all events, was a material witness for the petitioner.

member or petitioner is disqualified, a scrutiny is avoided. If this application is acceded to, after several days' or weeks' inquiry into the validity of the votes, the parties may be rendered ineligible, and the time of the Committee, and the expense incurred by parties, rendered useless. In the *Lyme Regis* case, 1 P. R. & D. 26, a similar request to that now made was unanimously refused, and the charge of bribery against the sitting member and his agents directed to be proceeded with before the scrutiny. The *Harwich* case relied upon by the other side is really an authority against the application. In that case the sitting member was declared ineligible on the preliminary inquiry as to his qualification, and a scrutiny having commenced, and several votes been decided upon, the Committee refused to compel the petitioner to proceed with the charge of bribery, which they evidently considered to have been according to usage abandoned when the scrutiny commenced.

Mr. *Welsby* having been heard in reply,

The Committee decided not to take the case of scrutiny first.

Mr. *Phinn* then applied to the Committee for a summons for the above-named witnesses, and, in the event of their non-attendance, that the Committee should report to the House under 11 & 12 Vict. c. 98, s. 83.

The Chairman stated that these persons, not having been summoned by the Speaker's warrant, Where witnesses have not been served with the Speaker's warrant, the Committee has

no power to report their non-attendance to the House under s.83 of the 11 & 12 Vict. c. 98.

the Committee had no power to report their refusal to attend to the House; they were avoiding process, not disobeying any order. But the Committee were ready to grant the ordinary summons for their attendance, if required.

After several witnesses had been examined on behalf of the petitioner,

Mr. *Phinn* renewed his application to the Committee to report to the House the absence of the above-named witnesses, to avoid service of the Speaker's warrant, citing the *St. Albans* case, 1851, Print. Min. p. 8; *Penrhyn*, 82, Journ. 297; *Ipswich*, K. & O. 377 (22 July, 1835); but,

The Committee, after deliberation, resolved,

"That section 83 does not give the Committee power to make such a report, as the witnesses in question have not been summoned."

March 12. After other witnesses had been on this day examined on behalf of the petitioner,

Committee will not ask leave of House to adjourn over Easter holidays to enable the petitioner to obtain attendance of witnesses who have absconded.

Mr. *Phinn* applied to the Committee to make a special report to the House for leave to adjourn until after the Easter holidays, in order to enable the petitioner to procure the attendance of the above-mentioned witnesses.

Evidence was then given of the unsuccessful efforts made by the agents of the petitioner to serve the witnesses with the Speaker's warrant; but no proof was given that their absence was attributable to any act of the sitting member or his agents.

The Committee, after hearing counsel for and against the application, refused to comply with it (a).

On the assembling of the Committee this day, March 14. Mr. *Phinn* stated, that after the above decision, he felt it would be useless for him to proceed further with the prosecution of the case.

The Committee then came to the following Final resolutions. final resolutions for report to the House:—

1. "That William Walter Cargill, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Berwick-upon-Tweed."

2. "That no case of bribery was proved."

3. "That it was not proved that corrupt practices prevailed at the said election" (b).

4. "That there was no evidence laid before the Committee from which they had reason to believe that corrupt practices extensively prevailed at the said election" (b).

5. "That the petition of Alexander Mitchell was not frivolous and vexatious."

(a) The Committee divided on the question, "That Mr. *Phinn's* application be refused." *Ayes*, 3: Mr. Longfield, Mr. Turner, Mr. Stanhope. *Noes*, 2: Mr. Pollard Urquhart, Mr. Leveson Gower.

(b) See 26 & 27 Vict. c. 29.

CASE XXXI.

1864.

BOROUGH OF LISBURN (Second).

The Committee was appointed on the 9th of March, 1864,
and consisted of the following Members :—

Hugh Edward Adair, Esq., Ipswich,
(Chairman.)

Wm. Edward Forster, Esq., Bradford.		Henry Paull, Esq., St. Ives.
Frederick North, Esq., Hastings.		William Stirling, Esq., Perthshire.

Petitioners :—1. Jonathan Joseph Richardson, Esq., an
unsuccessful Candidate.

2. Electors.

Sitting Member :—Edward Wingfield Verner, Esq.

Counsel for Petitioners :—Mr. Phinn, Q.C., Mr. Rodwell,
Q.C., and Mr. J. Clerk.

Agents :—Messrs. Wyatt and Metcalfe, and Mr. Thos. Wilson.

Counsel for Sitting Member :—Mr. O'Malley, Q.C., Mr.
Cooke, Q.C., and Hon. R. Bourke.

Agents :—Messrs. Baxter, Rose, Norton, and Spofforth,
and Mr. Barlow.



March 11. THE Committee agreed to the twelve usual pre-
liminary resolutions (a).

1st Peti- The first petition (of Mr. Richardson), after
tion.

(a) *Ante*, p. 218.

stating that at the last election for Lisburn, in June, 1863, Edward Wingfield Verner, Esq., Robert Barbour, Esq., and the petitioner, were candidates, and that the former was returned, alleged that the said E. W. Verner was guilty of bribery, treating, and undue influence, at the previous election for Lisburn, held in February, 1863, which election had been duly avoided by an Election Committee (a), and that the said E. W. Verner was thereby incapacitated to serve in the present Parliament for the said borough; that his incapacity was notorious; that due notice had been given to each elector, before he polled, of such incapacity; and that the votes given for the said E. W. Verner were in consequence thrown away, and that the true majority of legal votes were given for the petitioner. It then alleged bribery, treating, and undue influence, against Mr. Verner and his agents, at the last election in June, and concluded by praying the House to declare his election and return to be null and void, and to amend the return by substituting the name of the petitioner for that of Mr. Verner.

Disquali-
fication by
bribery at
previous
election.

Bribery,
treating,
and undue
influence.

The second petition (of electors), after stating that the petitioners were registered electors, and voted at the last election, contained allegations similar to those contained in the first petition.

2nd Peti-
tion.

(a) See *ante*, p. 227.

Mr. *Phinn* opened the case.

March 22. After the inquiry had continued for several days, and all the evidence, both against and for the sitting member, had been received, and counsel for the sitting member had summed up his case, the further sitting of the Committee was abruptly suspended by the sudden indisposition of Mr. Stirling, one of the members of the Committee. Under these circumstances the question arose what course the Committee would pursue, the House being then adjourned for the Easter recess.

Committee cannot adjourn, during the adjournment of the House, to the day after that on which the House meets again. If they do, the adjournment is illegal, and the jurisdiction of the Committee at an end.

After some discussion,

The Committee ultimately determined to adjourn till Tuesday, the 5th of April, that being the day after the day appointed for the meeting of the House, in order to report to the House the illness of Mr. Stirling.

April 5. The Committee met this day, and further adjourned till the following day, Mr. Stirling's excuse not having yet been allowed by the House.

April 6. At the meeting of the Committee this day (a) no counsel for the sitting member were present, but the agent for the sitting member stated, that the sitting member had been advised that the Committee had acted *ultra vires* in adjourning to the day following that of the meeting of the House, and had therefore now

(a) The counsel for the Speaker was in attendance.

no legal existence. He therefore protested, on behalf of the sitting member, against the Committee taking any further proceedings in the matter.

Mr. *Phinn*, on behalf of the petitioners, contended that the 73rd section of the 11 & 12 Vict. c. 98, only applied to some exceptional incident that had occurred dehors the tribunal, such as the abduction of a material witness, &c., and of which incident the House was to judge whether it afforded sufficient ground for a longer adjournment than twenty-four hours; and not to the ordinary constitution of an Election Committee. The greatest care had been taken by the Act that there should always be the full number of members of the Committee present, if possible; and the 73rd section only applied to cases where all five members were present, and not to such cases as the present, where the Committee was crippled in its functions by the absence of one of its members, and was not in effect a Committee for any purpose at all till the excuse of the member whose indisposition had caused the adjournment was allowed by the House. For such a state of circumstances as the present, however, the 75th section provided, and that section expressly enacts, that such select Committee, *i.e.*, a Committee so crippled as aforesaid, shall *never* sit until all the members to whom such leave has not been granted, or excuse allowed by the House, are present.

Again, it is clear, that if the proviso at the end of section 73, as to the Committee adjourning to the day appointed for the meeting of the House, and that day only, applies to such cases as the illness or death of a member of the Committee, the previous part of the section must apply to such a state of circumstances also; but the previous part of the 73rd section provides for the Committee never adjourning for more than twenty-four hours; so that according to this construction the Committee must, in case of the illness or death of a member during the recess, adjourn *de die in diem* till the meeting of the House, the very thing which the 75th section expressly prohibits them from doing.

Committee will relax their preliminary resolution as to hearing only one counsel in a case of importance.

Mr. *Clerk* followed on the same side; the Committee having, on the application of Mr. *Phinn*, consented to waive their preliminary resolution as to hearing only one counsel, in consequence of the importance of the point, and the attention which the learned counsel Mr. *Clerk* had paid to this branch of Parliamentary Law.

Final resolution.

The Chairman, after deliberation, announced that the Committee were of opinion that they were not in a position to continue the inquiry.

CASE XXXII.

BOROUGH OF BARNSTAPLE.

1864.

The Committee was appointed on the 12th of April, 1864,
and consisted of the following Members :—

Edward Howes, Esq., East Norfolk,
(*Chairman.*)

Alexander Murray Dunlop, Esq., Greenock.	Sir F. H. Goldsmid, Bart., Reading.
George Sclater-Booth, Esq., North Hants.	William John Humphrey, Esq., Andover.

Petitioners :—Electors.

Sitting Member :—Thomas Lloyd, Esq.

Counsel for Petitioners :—Mr. O'Malley, Q.C., Mr. Cooke,
Q.C., and Mr. Yorke.

Agents :—Messrs. Baxter, Rose, & Co., and Mr. Bremridge.

Counsel for Sitting Member :—Mr. Coleridge, Q.C.,
Mr. Welsby, and Mr. McNamara.

Agents :—Messrs. Fearon and Clabon, Mr. Clay, and
Mr. Matthews.

The Committee agreed to the twelve preliminary April 14.
resolutions mentioned *ante*, p. 11.

The petition, after stating that at the last elec-

Bribery,
treating,
and undue
influence.

Scrutiny.

tion for Barnstaple, Richard Bremridge, Esq., and Thomas Lloyd, Esq., were candidates, and that the latter was returned, alleged that the majority for Mr. Lloyd was a colourable one only, the real majority of legal votes being for Mr. Bremridge. It then alleged the disqualification of voters, and the improper reception and rejection of votes on various grounds, charged bribery, treating, and undue influence, against Mr. Lloyd and his agents, and finally prayed scrutiny and the seat for Mr. Bremridge.

Mr. *O' Malley* was proceeding to open the case when,

Mr. *Coleridge* stated that Mr. Lloyd had, within the last few days, ascertained that certain persons, in whom he had previously put the greatest confidence, had done acts which would undoubtedly compromise his seat. On behalf of Mr. Lloyd, therefore, he now begged to withdraw from further contesting the prayer of the petition. Mr. Lloyd, however, wished to be examined, to disclaim all knowledge of the illegal proceedings.

Committee will not avoid seat on ground of bribery, without some evidence of bribery being given, be-

The Chairman stated, that without *some* evidence of bribery, beyond the admission of the counsel for the sitting member, the Committee were of opinion that they could not avoid the seat.

Such evidence was then given, and Mr. Lloyd having then been examined, and his counsel having withdrawn,

The Committee resolved,

“That Thomas Lloyd, Esq., is not duly elected a Burgess to serve in this present Parliament for the borough of Barnstaple.”

yond the admission of counsel of the sitting member.

The Committee then proceeded with the scrutiny.

EDWIN LEY'S CASE.

It appeared there were two persons of the name of Ley on the register, William and Edwin. Both were intended to be objected to, and under the same head of objection. William Ley was objected to under his right name and number on the register; but Edwin Ley was objected to under the name of William Ley; so that the name of William Ley appeared twice on the list of voters objected to, only with a different number set opposite the name in each case. The number of Edwin Ley on the register was correctly stated in the list of voters objected to; the only mistake was in the Christian name.

Mr. *Cooke* submitted that this was a mere clerical error, quoting *Bridgnorth*, 2 P. R. & D. 21, and that by the common law of Parliament, delegated by the House to the Committee, the Committee had even power to go into a case not included in the list at all. The 55th section of the 11 & 12 Vict. c. 98 was not passed to fetter the jurisdiction of the Committee; it was only that the parties might be informed of the voters intended to be objected to; besides, in

Committee will not inquire into the vote of Edwin Ley objected to under the name of William Ley.

this case both the Leys were objected to, and under the same head of objection. Rogers on Elections (9th ed.), p. 541, *in notis*.

The chairman referred to the 74th section of the 11 & 12 Vict. c. 98, and to Rogers on Elections (9th ed.), p. 539.

The Committee, after deliberation, resolved,

“That the petitioners are not at liberty to go into the case of Edwin Ley” (*a*).

April 15.
Vote of
briber
struck off
the poll.

After a sufficient number of votes to give Mr. Bremridge a majority had been struck off the poll on various grounds, including the votes of several persons who were proved to have given bribes, which were struck off in accordance with the 26 & 27 Vict. c. 29, s. 8,

Final resolutions.

The Committee came to the following final resolutions for report to the House, in addition to the one above mentioned, p. 241 :—

2. “That Richard Bremridge is duly elected, and ought to have been returned a Burgess to serve in this present Parliament for the borough of Barnstaple.”

(*a*) The vote of Edwin Ley was subsequently struck off, under the power given to Committees by the 26 & 27 Vict. c. 29, s. 8, of striking off the poll voters guilty of bribery, though not included in the list of voters objected to, evidence to inculcate him having come out in the course of the inquiry into another person's vote.

3. "That the Committee had altered the poll at such election by striking off the names of" (here followed eight names), "as not having had a right to vote at such election. Also of Richard Garnsey Adams, Francis Bowden, Henry Lewis, Edwin Ley, John Tinson Turner, Arthur Turner, Charles Hancock, and William Harris, it having been proved that they had received money for the purpose of influencing their votes at such election. Also of Benjamin Williams, Edmund Darke, Samuel Glyde, Richard Bencraft, Charles Snow, and William Verney Sanders, it having been proved that they have been guilty of bribery at such election."

4. "That Thomas Lloyd, Esq., was by his agents guilty of bribery at the last election."

5. "That it was proved to the Committee that" (the eight persons mentioned in the second part of the third resolution) "had been bribed with the payment of the sum of £5 respectively, but that it was not proved that such bribery was committed with the knowledge and consent of the sitting member."

6. "That they have not reason to believe that corrupt practices have extensively prevailed at the said election for Barnstaple."

INDEX.

A.

ABANDONMENT

- of opposition will not prevent Committee proceeding, 8.
- of petition, 17, 46, 65, 76, 233.
- of defence of seat, 8, 26, 61, 227, 240.

ACCOUNTS, *see* PRACTICE,

- ordered to be produced when not sent in to election auditor, 106.

ADJOURNMENT OF COMMITTEE

- asked for to obtain attendance of witness, and refused, 232.
- unlawful when the House has adjourned, 236.

ADMISSION

- of bribery on behalf of sitting member not sufficient evidence of, 240.

AGENCY,

- facts held insufficient to establish, 29, 72, 118, 157, 189.
- facts held sufficient, 74, 79.
- facts held sufficient to prove *prima facie* agency, 4.
- to be proved before evidence of undue influence can be given,
- at former election not evidence of agency at subsequent election, 3.
- statement of agent after termination of agency held admissible, 7.
- statement of agent after termination of agency held not admissible, 13.

AGENT

- examined when petition withdrawn, 65.

ALTERATION OF POLL,

- voters bribed and struck off, 32, 33, 34, 35, 36, 185.
- voters not having had the right to vote, 186.

ATTORNEY-GENERAL

directed to prosecute for bribery, 228.

B.

BARRISTER. *See* REVISING BARRISTER.

BONA FIDES

of petition questioned, 223.

BRIBER,

vote of, bad, 37, 182.

BRIBERY, *see* HIRE OF HOUSE, MESSENGER, CANVASSER, TRAVELLING EXPENSES,

case contained in list may be inquired into, though not mentioned in opening speech, 14.

by promises to hire vehicles, 15, 107.

travelling expenses, when payment of, is not, 29.

travelling expenses, when it is, 142, 189.

promise to buy goods beyond value, 32, 36.

promise of money for hire of house, 34.

promise to hire house of voter though the money is not paid, 34, 35.

niring of house not used for any purpose, 34, 106.

promise to send beer to publican's house to treat voters, when not bribery, 35.

promise of goods which were sent and not paid for, 36.

promise of a bribe, vote good before 26 Vict. c. 29, 37.

not since, 37.

by colourable employment of messengers, &c., 87.

what not sufficient evidence of bribery, 37, 42, 49, 62, 98, 131, 158.

what sufficient evidence of, 140.

when evidence of, may be given, though briber not identified with any one named in list, 116.

by payment to personate voter, 225.

alleged by minister of Crown, 135.

by agents at former election vacates second election upon acceptance of office under Crown, 150.

giving of money without compensation not bribery, 98.

prosecution for, recommended by Committee, 83.

C.

CANVASSERS,

payment and employment of, not bribery, if not done to influence election, 76.

CERTIFICATE OF CHARGEABILITY. *See* PAROCHIAL RELIEF.

evidence of receipt of parochial relief, 174.

of lunacy, payment for, is not receipt of parochial relief, 177.

COLOURABLE EMPLOYMENT. *See* MESSENGERS, BRIBERY.COMMITTEE, PROCEEDINGS OF, *see* ADMISSION, ADJOURNMENT,

will proceed with inquiry when sitting member withdraws, 8.

when sitting member declines to defend his seat, 20.

will try a petition, although member petitioned against has vacated his seat, and been re-elected, 60.

may examine agents as to withdrawal of petition, although petition not legally signed, 64.

when, will order production of bills and claims sent in to sitting member, 104.

will not order production of documents by public departments, 123.

will grant *subpœna duces tecum* to officers of any public department, 124.

will inquire into alleged interference of ministers, if proposed to connect it with sitting member, 126.

direct letter of minister's private secretary to be produced, 130.

will not inquire into vote where statutable incapacity at time of revision, and no objections taken, 179.

will not inquire into vote of person objected to in wrong name, 242.

will, on conclusion of evidence as to bribery, give their opinion upon it before question of agency is gone into, 46.

decline to report non-attendance of witness not summoned by warrant of speaker, 232.

COMMISSION OF INQUIRY,

under 15 & 16 Vict. c. 57, appointed, 9, 27, 185.

COMPENSATION. *See* AGENCY.CONTRACT. *See* ELECTOR, EVIDENCE, DISQUALIFICATION, PETITION, REGISTER, UNDUE INFLUENCE.

CONVEYANCE OF VOTERS,

when, may be provided, 31.

when, evidence of bribery, 109.

COSTS

refused, 14, 22, 38, 57, 143, 160, 181, 205, 220, 228.

on scrutiny when not made at the close of the inquiry in each case, 181.

COUNSEL

not confined to cases of bribery alluded to in opening speech, 14.

CUSTOMS AND EXCISE. *See* INCAPACITY STATUTABLE.

D.

DECLARATION OF AGENTS AFTER ELECTION. *See* EVIDENCE.DISQUALIFICATION, *see* SHERIFF, PETITION,

lease of railway from Public Works Loan Commissioners is not, 209.

carrying mails on railway lessed by sitting member is not, 209.

payments to sheriff, agents, &c., beyond amount according to 1 & 2

Geo. IV. c. 58, is not, when not given corruptly, 192.

candidate not disqualified from petitioning unless his disability is obvious, 214.

notice of, 145, 149.

bribery by agent is disqualification for the same place and same Parliament, 152.

DECISION OF COMMITTEE,

what is final, 204.

DEFENCE OF SEAT

abandoned before evidence given, 240.

. E.

ELECTION AUDITOR

abolished by 26 Vict. c. 29.

bills not sent into, ordered to be produced, 104.

ELECTION AGENT. *See* AGENT.ELECTOR. *See* VOTER.

EMPLOYMENT OF MESSENGERS. *See* MESSENGERS, BRIBERY.

EVIDENCE, *see* NON-RESIDENCE, TREATING, BRIBERY, UNDUE INFLUENCE IN AGENCY,

when inadmissible, 13, 115.

statement by agent after election, except as to acts during election, 7.
such statement not admissible to prove agency, 13.

conversation at a club as to election, where some of the members,
being proved to have bribed, are admissible upon question of
agency, 25.

of voter and other witnesses on the notes may be read in support of
objection to such voter on a scrutiny, 33.

placarding walls of a public-house at request of agent of sitting
member is of itself no evidence of bribery, 38.

to discredit one's own witness, when admissible, 41, 85.

may be given of corrupt agreement to return a candidate, though
another candidate afterwards comes forward, 127.

what evidence admissible against ministers, 128.

as to undue influence by particular persons admissible when part of
the general case, though name not in list, 68.

inadmissible as to matters occurring two months after election, 69.

of payment of money to rich voters inadmissible, unless voters
thereby bribed, 130.

F.

FREEMAN,

residence of, 169.

FURNITURE,

removal of, by voter, 163, 170.

G.

GENERAL COMMITTEE OF ELECTIONS,

report of, noticed by Committee, 223.

H.

HIRING

of cars and carriages, 15, 108.

HIRE

of house, when bribery. *See* BRIBERY.

HOUSEHOLDER. *See* RESIDENCE.

I.

ILLNESS

of member of Committee puts an end to the inquiry, 238.

INCAPACITY STATUTABLE,

employment in Excise or Customs, will not be inquired into by Committee, if it exists at time of revision, and no objection taken, 179.

by receipt of a loan. *See* PAROCHIAL RELIEF.

INDUCEMENT

to personate voter. *See* BRIBERY.

INFLUENCE. *See* UNDUE INFLUENCE.

INNKEEPERS,

vote of, bad, when house hired by a promise of money, 34, 35.

vote of, bad, when hired for no object, and refreshments supplied to hirer, 34.

vote of, good, when house is placarded, but no payment asked for or made, 37.

INTENTION

of voter to return, 163, 165, 170, 171.

INTIMIDATION AND VIOLENCE,

allegation of, in petition, 67, 219.

insufficient evidence of, 69, 219.

J.

JURISDICTION OF COMMITTEE. *See* PRACTICE, ILLNESS.

L.

LISTS, *see* AGENCY, BRIBERY,

need not include names of persons offering bribes, 37.

will not be amended by adding name of a briber, omitted inadvertently, 41.

cases included in, will be gone into, though not mentioned in opening speech, 14.

LISTS—continued.

- will not be amended by substituting one name for another, 56.
- must contain name of public-house at which alleged treating took place, 91.
- will not be amended by changing name of bribers, 130.
- whether application ought to be made at once when case of bribery is proved during investigation, 131.

LODGINGS,

- hire of, as evidence of bribery, 107.
- hire of, by voter beyond limits, when does not disqualify, 165, 169, 171.

LOSS OF TIME,

- payment for, not bribery, if not made from corrupt motive, 98.

LUNACY,

- payment for certificate of, not receipt of parochial relief, 177.
- maintenance of daughter, aged 22, during lunacy is not parochial relief, 178.

M.**MAILS,**

- conveyance of, upon a railway not Government contract by lessee of the railway, 217.

MEASUREMENT,

- mode of, for residence, 169.

MESSENGER,

- vote of, if employed and paid, good, 33, 80.
- colourable employment of, is bribery, 87.

MINISTERS, INTERFERENCE OF,

- evidence of, when admissible in support of allegation of bribery by alleged agent, 126. *See* **UNDUE INFLUENCE.**

MOTIVE, CORRUPT. *See* **BRIBERY, PERSONATING VOTER.****N.****NAME. *See* **OBJECTION TO VOTER.******NON-RESIDENCE. *See* **RESIDENCE.****

O.

OBJECTION

not taken before revising barrister not allowed before Committee, 172, 179, 181.

to voter in wrong name, Committee will not inquire into vote, 242.
See LISTS, BRIBERY.

OFFICE OF PROFIT UNDER CROWN,

acceptance of, by member petitioned against will not take away jurisdiction to try petition, 60.

election under writ, or from acceptance of, is void if petition against bribery be pending, and afterwards member be unseated on ground of bribery by agents, 150.

OUT-VOTERS,

travelling expenses of. *See* TRAVELLING EXPENSES.
conveyance of, 31.

P.

PAROCHIAL RELIEF,

maintenance of lunatic wife at parish expense is receipt of, although repaid, 175.

payment by relieving officer to medical man for certificate of voter's insanity not a receipt of, 176.

maintenance of lunatic emancipated daughter in asylum is not receipt of, 177. *See* CERTIFICATE.

PAYMENT TO AGENTS,

whether disqualification, 200.

PERSONATING OF VOTER,

payment to induce a person to be guilty of, is bribery, 226.

PETITION

read in order upon Journals, 149.

alleging disqualification by reason of contract on account of public service, 207.

alleging disqualification by reason of lease of railway from Public Works Loan Commissioners, 208.

alleging disqualification by reason of corruptly giving fees to sheriff and under-sheriff, agents, &c., or at former election, 192, 193.

alleging bribery after teste of writ, 103.

PETITION—*continued.*

- withdrawal of, when no legal register, 64.
- alleging riotous and disorderly proceedings, 67.
- alleging undue interference of ministers of the Crown, 122.
- alleging disqualification of sitting member, and notice thereof, 145, 148, 162, 235.
- bonâ fides* of, 223.
- withdrawal of, 149.
- notice of withdrawal of, 223.
- must be signed by two electors on register, 64.
- read in order in which appear on Journals of House, 149.
- may be presented by candidate where disqualification is not obvious, 214.

PETITIONERS,

- identity of, proved, 223.

POLLING BOOTH,

- alleges in petition that, not opened in proper time, 72.
- allegation that, not kept open for legal time, 72.

PRACTICE, *see* COSTS, SCRUTINY, EVIDENCE, PETITION, COMMITTEE,

- on objection that no express decision of revising barrister, cross-examination must be confined to that point, 173.
- Committee will not inquire into vote where statutable incapacity existed at time of revision, and no objection was taken, 179.
- Committee not bound by finding of former Committee, that the sitting member, then the petitioner, was not disqualified, 194.
- Committee will go into alleged cases of bribery contained in bribery list, though not alluded to in opening speech, 14.
- Committee will proceed with inquiry, although at the opening the sitting member decline to defend his seat, 20.
- evidence, once on the notes, will not be struck off if not objected to at the proper time, 24.
- evidence on the notes may be read in support of objection to the validity of a vote on a scrutiny, 33.
- will examine agents on both sides when petition charging bribery is withdrawn, 64.
- recriminatory evidence may be given against candidate claiming seat by the petition, although claim be abandoned, 143.

PRACTICE—*continued*.

petitions read in order from Journals of House, 149.

PRELIMINARY RESOLUTIONS,

what not within, 130.

waiver of, 238.

PROSECUTION

recommended by Committee, 83.

directed by order of the House, 228.

PUBLIC DEPARTMENTS, *see* COMMITTEE,

Committee will not order production of documents from, 123.

Committee will direct attendance of officer from, 123.

Q.

QUALIFICATION. *See* DISQUALIFICATION.

R.

REFRESHMENTS,

giving of, not treating, when not done with corrupt motive, 49, 96.

RECRIMINATORY EVIDENCE, *see* PRACTICE,

right of, is not lost by petitioner abandoning claim to seat, 143.

finding of Committee upon evidence of, not conclusive on subsequent petition against same person, 194.

REGISTER

for borough must be signed by town-clerk, 64.

RESIDENCE,

voter disqualified by reason of non-residence, 163, 165, 166, 170.

what insufficient evidence of non-residence, 166, 171.

beyond limits of borough before and at the time of revision, but no objection taken at revision, vote allowed, 181.

RESOLUTION

not reported to House, 204.

REVISING BARRISTER,

what not express decision of, 172.

when vote will not be inquired into by Committee, where no objection taken before, 172, 180, 181.

RIOT. *See* INTIMINATION.

RUNNERS,

- employment of, 51, 79, 80, 82.
- colourable employment of, bribery, 87.

S.

SCRUTINY, *see* BRIBERY, AGENCY,

- evidence of voter on notes may be read in support of objection to such voter, 33.
- will not be gone into first, though material witness on other branch of petition absent, 230.
- cases of, 32, 163.
- Committee will proceed alternately, 166.

SHERIFF,

- payment to, at an Irish election, beyond sum allowed by 1 & 2 Geo. IV. c. 58, no disqualification, if not corruptly made, 196.
- application not made to adjourn poll, 70.

SIGNATURE OF PETITION,

- what is *bonâ fide* signature, 223.

SITTING MEMBER

- examined, 8, 26, 65, 68, 80, 97, 119.
- bribery by, proved, 227.

SPECIAL REPORT OF COMMITTEE

- asked for, and refused, 232.

SPEAKER'S WARRANT,

- witness not served with, absence of, cannot be reported to House, 232.

SUMMONS

- for witness applied for, 231.

T.

TIDE-WAITER. *See* INCAPACITY STATUTABLE.

THREATS

of loss of custom when render vote invalid; 32.

TREATING, *see* AGENCY, EVIDENCE,

what not sufficient evidence of, 13, 49, 75, 95, 108.

what sufficient evidence of, 107, 141.

lists must contain name of the inn at which the alleged treating took place, 91.

TRAVELLING EXPENSES,

payment of, when not bribery,* 29, 92, 96, 159.

payment of, when bribery, 189.

payment of, does not render sitting member guilty of bribery within 17 & 18 Vict. c. 102, 31.

U.

UNDUE INFLUENCE,

threats of loss of custom, 32.

violence and intimidation, 69.

names of persons charged with, may be inquired into if part of general case, though not named in lists, 68.

allegation as to, by ministers, 122.

evidence as to, 132.

what evidence admissible against ministers, 128.

what not sufficient evidence of, by ministers, 132, 137.

V.

VIOLENCE. *See* INTIMIDATION.

VOTE,

good, though travelling expenses paid to voter, 29.

bad, if influenced by promise to buy goods beyond their value, 32.

bad, if voter is influenced by threats of loss of custom, 32.

bad, if voter have bribed, 182.

good, where voter employed and paid as messenger, 30.

bad, where voter's house is hired by a promise of payment, 34, 35.

bad, where rooms in voter's house are hired for no purpose, 34.

bad, where voters receive money to influence votes, 243.

VOTE—*continued.*

good, where beer promised to be sent to voter's house to treat voters, but not for sale, 35.

bad, where voter influenced by promise of goods afterwards sent and not paid for, 36.

good, before 26 Vict. c. 29, where voter promises bribe, 37.

good, where voter's house or inn is placarded, but no payment made, and none asked for, 37.

conversation respecting vote inadmissible when it occurred before vacancy, 117.

struck off even when proved to be inculpated, 242.

W.

WITHDRAWAL

of petition. *See* PETITION, ABANDONMENT.

of defence of seat. *See* ABANDONMENT.

WITNESS,

unwillingness of, not a matter for the Committee, 69.

non-attendance of, not reported when not summoned on speaker's warrant, 232.

WRIT

recommended not to issue until evidence of proceedings be printed, 83.

